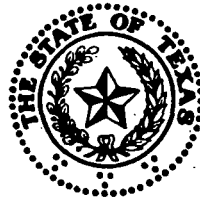


GENERAL INVESTIGATING COMMITTEE

REPORT

to the

HOUSE OF REPRESENTATIVES



STATE OF TEXAS

Deposit Insurance Investigation

VOL. I

AUSTIN, TEXAS

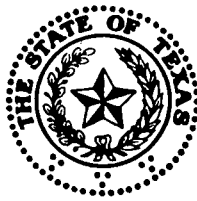
Jan., 1973

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REPORT OF
GENERAL INVESTIGATING COMMITTEE
TO
HOUSE OF REPRESENTATIVES
STATE OF TEXAS

The question of possible misconduct on the part of members of the Texas Legislature in connection with Deposit Insurance Legislation presented to the 61st Legislature is now moot in view of Judicial proceedings that have transpired and resignation of the Speaker of the House which followed, but an accurate report to the Legislature of the activities of this Committee is in order.

This Committee's work began under most trying circumstances. It was maligned and condemned from the very beginning, as if it were one of the accused. Co-operation was hard to come by. Suspicion was the order of the day. Bitterness and political intrigue ran rampant. But, as history shows repeatedly, time is quite a leveler. We hope this Report will receive balanced coverage with the condemnations.

This General Investigating Committee was appointed on April 13, 1971, in response to House Simple Resolution No. 89, primarily for the purpose of checking conduct of House Members in connection with

the passage of House Bill No. 72 and House Bill No. 73 in the Second Called Session of the 61st Legislature.

At the time of its appointment, only six weeks remained in the Regular Session of the 62nd Legislature. The House was quite busy with committee meetings, (five of which were presided over by members of this Committee), and with the study of Bills on second and final reading. After careful consideration, your Committee decided to give priority to day to day Legislative demands for the remaining six weeks of the session and to plunge full force into Investigating Committee hearings as soon as possible, after adjournment of the Regular Session. This we did.

Our decision to proceed in this manner was further motivated by two facts which are important to remember. First, at the time this decision was made, the Securities and Exchange Commission (which broke the news on January 19, 1971, and gave us our first information of the alleged stock scandal) was continuing its investigation of this same general subject matter. Secondly, the House General Investigating Committee has no power to try House Members for violation of a law of this State. Under Rules of the Texas House of Representatives, it can only seek out the facts and report back to the House with recommendations for censure or removal of its members.

This further fact should be remembered.

A House Investigating Committee is very similar to a Grand Jury. It receives and hears complaints of all kinds. These complaints are investigated, sometimes by closed hearings of the Committee, sometimes by members of the Department of Public Safety, and sometimes by special investigators. It is only when the Committee is satisfied that a complaint has merit, that further investigations are made and open hearings are held. By this process, planted rumors and half-truths are soon rooted out and discarded. This is the only way the investigating process of any Legislative body can be protected.

Our investigation was slowed considerably at the outset by the reluctance of the Attorney General's office to furnish this Committee with information available to it, some of which had been acquired from State agencies by virtue of the co-operation requested in House Simple Resolution No. 266. Rightfully or not, the Attorney General's office concluded it should take the lead in this investigation. When its work was done, the Attorney General's office proceeded to deliver to the District Attorney of Travis County certain information for Grand Jury purposes, and to deliver to the House General Investigating Committee certain information which it thought your Committee needed. Your Committee did

not think this was the intention of the House of Representatives and proceeded, accordingly, to "plow some ground twice."

During July, August and September of 1971, your Committee diligently pursued its mandate. An opportunity was afforded every member of the House of Representatives, through a questionnaire, to pass on to the Committee any information anyone might have on misconduct of a House Member. No evidence of misconduct was presented. Perhaps the questionnaire was too long, and perhaps it contained some inappropriate questions, but it gave every member a chance to "speak up" if he cared to do so. It was personal and confidential until it was released to the press by some members addressed. Criticism offered by some members and the Chairman's reply appear in the appendix to this Report. (1)

Your Committee reviewed every pertinent deposition taken by the Securities and Exchange Commission in its investigation of this subject matter. Your Committee studied the State Banking Examiner's Report on the Sharpstown State Bank. The Committee Counsel, at the direction of the Committee, attended the hearing in Federal Judge Singleton's Court in Houston, on July 26, 1971, which concerned the scope of Frank Sharp's immunity from prosecution, and also attended all those portions of the lengthy Securities and Exchange Commission Civil Suit in Dallas, which concerned public

officials. Your Committee, in closed sessions, questioned Representatives Mutscher and Shannon, Banking Commissioner Stewart, and Sam Kimberlin, Jr., a representative of Texas Bankers Association. Your Committee, in open hearings, questioned Frank Sharp, Eugene Palmer, Waggoner Carr, Robert Stewart, Sam Kimberlin, Jr., Clay Cotten and Senator Charles Wilson, and had set up an open hearing for October 7th and 8th, 1971, to question Osario, Mutscher, Shannon, Heatly and others who had not been able to attend the first open hearing, when indictments were brought back against Mutscher, Shannon, McGinty, and Osario by the Travis County Grand Jury. (2)

At this point, your Committee decided it should withhold any further investigation of the alleged stock scandal, so as not to interfere with the Courts in their efforts to permit "due process" for both the Defendants and the State.

The Trial Court has spoken, finding Representatives Mutscher and Shannon guilty of conspiracy to accept a bribe, and the case is now on appeal. This fact, plus the resignation of Representative Mutscher as Speaker of the House, leaves the question of any action on the part of the House of Representatives a moot one.

Information available to this Committee shows the following, chronologically:

May 1, 1969, HSR 337 by Shannon, read and adopted creating Special Banking Committee to make complete study of Texas banks and banking for the purpose of determining, among other things . . . "(3) possible state insurance program to supplement the Federal Deposit Insurance Corporation."

June, 1969, Speaker Mutscher talked with Frank Sharp relative to purchase of National Bankers Life stock, but indicated if he did, he would need financing.

July, 1969, Eugene Palmer, law partner of John Osario, at latter's request, drafted two bills which later became HB 52 and HB 53, known as Texas Depositor Protection Act and bill authorizing incorporation for such purpose.

July, 1969, Mutscher purchased 10,000 shares of stock in National Bankers Life, paid for by loan from Sharpstown State Bank in the amount of \$130,000.00. Shannon purchased 4115 shares of stock in National Bankers Life, paid for by loan from Sharpstown State Bank in the amount of \$45,929.38.

August 4, 1969, Heatly purchased 8813 shares of stock in National Bankers Life, paid for by loan from Sharpstown State Bank in the amount of \$125,585.25.

July 28 to August 26, 1969, First Called Session of the 61st Legislature. (Governor never opened call to include consideration of Deposit Insurance Legislation.)

August 12, 1969, HB 52 by Shannon, the Depositors Protection Act, introduced, read first time and referred to Committee on Banks & Banking. No further action on this bill.

August 13, 1969, HB 53 by Shannon, permitting Corporation to insure deposits, introduced, read first time and referred to Committee on Banks and Banking. No further action on this bill.

August 27 to September 9, 1969, Second Called Session of the 61st Legislature. (Governor's opening call did not include consideration of Deposit Insurance Legislation.)

September 5, 1969, HB 72 and HB 73, similar to HB 52 and HB 53 of 1st Called Session, by Shannon, introduced, read first time and referred to Committee on Banks and Banking.

September 8, 1969, Message from Governor submitting as additional subjects for consideration in Second Called Session:

1. Legislation providing for additional insurance on bank deposits.

September 8, 1969, HB 72 and HB 73, reported favorable by House Committee, all necessary rules suspended, read second time and amended, constitutional Rule suspended, read third time and finally passed, 123 to 12, then sent to Senate.

September 9, 1969, HB 72 and HB 73 passed by Senate as amended, returned to House, House concurred in Senate amendments, sent

to enrolling clerk, signed by Speaker in presence of House and sent to Governor.

September 11, 1969, Speaker Mutscher sold 7,500 shares of National Bankers Life stock, acting through Frank Sharp, for \$150,000.00.

Shannon sold 3,500 shares of National Bankers Life stock for \$70,000.00.

September 18, 1969, first stand taken by Texas Bankers Association relative to these deposit insurance bills, asked Governor Smith to veto them.

September 29, 1969, HB 72 and HB 73 vetoed by Governor Smith.

September 30, 1969, Heatly sold 7,813 shares of National Bankers Life stock, acting through John Osario, for \$154,306.75.

January 19, 1971, inauguration day for Governor Smith, news release gave first knowledge of alleged scandal.

Evidence received from all sources, other than the testimony of Frank Sharp, indicated HB 72 and HB 73 was intended for protection of bank depositors, "in addition to" that offered by Federal Deposit Insurance Corporation and not "in lieu of".

HSR 337 referred to "possible state insurance program to supplement the FDIC".

Eugene Palmer, who drafted the bills, testified that he intended the deposit insurance to be "in addition to" and not "in lieu of" FDIC. This is borne out in HB 73, Sec. 2 (d) . . . "Insured deposit" . . . "such terms shall not mean and there shall be no insurance of deposits to the extent that same are insured by the FDIC". The emergency clause, which indicates the intent of the Legislature, reads in part " . . . the citizens of this State should be provided with a mechanism for protection of deposits in excess of \$15,000.00 . . ." (FDIC maximum at that time).

Governor Smith's message opening the Second Called Session to additional subject matters referred to "Legislation providing for additional insurance on bank deposits".

Banking Commissioner Faulkner agreed with the principal of the bill--to provide deposit insurance above that furnished by FDIC. Weakness of the bill apparently was fear of too many weak private Deposit Insurance Corporations being created.

Time has settled most of the problems brought to light since January, 1971. The District Courts have acted on indictments brought back by Grand Juries, and if they be in error, an appeal will settle the issue. The people have spoken in a general election, and under our democratic process, their decision should be honored.

Legislation, which at the time seemed in the public interest, has now been questioned. The blame could be many-fold. The industry affected and governmental agencies involved with the problem should feel an obligation to come forward to counsel and advise with the Legislature. Annual Sessions and reasonable compensation for Legislators could eliminate crowded calendars and close of the session "rush," and induce more effort and diligence on the part of Legislators. The citizens of Texas have had several opportunities to act favorably on these "improvements in government" and have declined to do so. All of this is of little comfort to us, for it shows the disease of indifference and "lackadaisicalness," and questionable conduct is more widespread than we care to admit.

There is a "silver lining" in the cloud. As a result of problems arising out of the National Bankers Life and Sharpstown State Bank debacle, and with the co-operation of the State Banking Department and the Insurance Commissioner, the 62nd Legislature passed the Asset Protection Act by Representative Slider, which required Insurance Companies to have on hand, at all times, free and unincumbered assets, equal to the Reserves required by law. This enables examiners to determine quickly (and not six months later) if a company is in financial trouble. Also passed was

The Holding Company Act, by Representative Nugent, which gave the Insurance Commissioner authority he did not previously have, to deal with the type of situation that did occur in the National Bankers Life case. House Bill 1830, passed in the last session, restricts officers or directors or a holder of 10% of the stock in his dealings with the Insurance Company. Additional Legislation may be needed to prohibit repurchase of loans sold within thirty days of a bank examination.

Improvements in the process of a Bill becoming a Law were made in Rules of the House in the last Special Session, and further improvements are contemplated in the 63rd Regular Session.

Your Committee recommends that these specific improvements be made:

1. That a strong and practical code of ethics be adopted, setting forth that conduct which shall and shall not be acceptable in any Legislator.
2. That a strong and practical Lobby Registration Act be enacted, requiring accurate reporting of funds expended and services rendered for and in behalf of Legislators, in an effort to influence legislation.
3. That the Speaker of the House not have a State Legislative Program, but act as Presiding and Chief Administration officer of the House.
4. That a system be installed permitting filing of Bills during a 60 day period immediately preceding the convening of a Regular or Special Session of the Legislature, at which said bills are to be considered.

5. That notice of a hearing on all Bills or complete substitutes be posted a sufficient length of time to give reasonable notice to all in a Regular Session, and a similar but shorter period of time in a Special Session, before said legislation may be considered in Committee. *act*
6. That anyone who has official access to information about proceedings before a Grand Jury, and who divulges same, other than as provided by law, shall be guilty of a misdemeanor and subject to fine or imprisonment.

Looking back, it is regrettable:

1. That "the Big Fish" was granted immunity from prosecution;
2. That the cloak of suspicion was improperly and unfairly thrown over the shoulders of several honorable and hard-working members of the House, resulting in their loss to the State of Texas.

Your Committee made every effort possible to carry out its statement to the House made at the very beginning of this investigation, to neither "whitewash nor proceed on a witch-hunt." The events that followed, and this Report, should verify that effort.

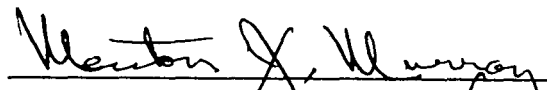
Our feelings are well expressed by Willard Barr, writing in a Rotary International publication, "The Rotograph," of Fort Worth, Texas, last June.

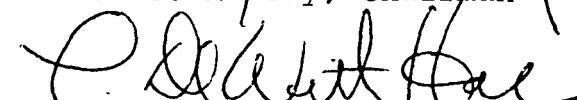
"These are very trying times and the danger is that we'll lose our faith in our own political system unless we react with reason instead of emotion to the ugly facts that are arrayed before us in the midst of an election season.

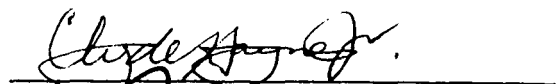
. . . A constructive reaction will be a mingling of deep concern for man's imperfections with a renewal of our traditional faith that man can and will improve. We'll move no less energetically to throw the rascals out . . . but we won't lose our convictions in the process.

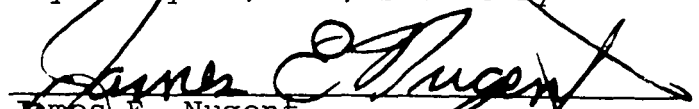
On the contrary, we'll keep our long range gaze on the host of men and women of this age, and all ages, who have kept their faith and acquitted themselves with honor in their public and private lives."


Respectfully Submitted,


Menton J. Murray, Chairman


L. DeWitt Hale, Vice-Chairman


Clyde Haynes, Jr., Secretary


James E. Nugent


James L. Slider

January 8, 1973

APPENDIXES

APPENDIX

1. Criticism of Committee's actions from twenty-eight members of the House and Chairman's reply
2. Letter to Mutscher, Shannon and Heatly requesting attendance at open meeting of Committee scheduled for October 7 and 8
3. H.B. 72 and H.B. 73 as passed
4. Governor's Veto Message
5. Testimony given in open hearing of Investigating Committee, August 18, 19, 1971.



(1)

HOUSE OF REPRESENTATIVES

AUSTIN

July 22, 1971

Representative Menton J. Murray
Capitol Building 102 A
Austin, Texas

Dear Chairman Murray:

At the outset we should like to say that any assistance of a substantial nature that we can give to aid your investigation, we stand ready to give. In effect that means appearing before your committee and testifying under oath and in public hearings to matters that are within your delegated authority to investigate and within our realm of knowledge.

Most of the information that we have is a matter of public record gathered prior to our efforts in attempting to pass H.S.R. 89 (establishing a bicameral study of H.B. 72 & 73) during the 62nd Legislature Regular Session.

Although the timing and selection of the House General Investigating Committee appeared to be self-serving on the part of the House leadership, we have practiced forbearance awaiting the good faith efforts of the House General Investigating Committee to initiate a substantial investigation under the broad and sweeping powers granted to it by statute.

Your committee's initial efforts are most disheartening. These efforts and our criticism of them fall into two general categories:

First, The Selection of Counsel. Though we are most reluctant to enter the field of personalities the manner of selection of counsel and the counsel itself would seem to bear investigation. It is most unfortunate that the counsel chosen is not so above question that we could all feel that a fair and impartial investigation was the principal concern. If you are unaware of the past roles and relationships which we feel have a bearing in this matter, again we will testify to these circumstances.

Second, The Questionnaire. We are most disturbed by the substance

of the fill-in-the-blanks questionnaire mailed out by the committee. The questions relating to the quality of newspaper coverage of state officials seem to be entirely inappropriate and wholly irrelevant. A serious investigation into the alleged wrongful conduct of state officials does not logically involve a press popularity poll.

The complete answers to an entire category of questions which the committee asks are unnecessary. With the vast powers available under subpoena your committee should find it unnecessary to ask who bought what when.

In another set of answers you expect self-incrimination. It is most naive to believe that a member of the House who is guilty of wrongful and criminal conduct will jeopardize himself by revealing information to your committee in such a manner.

A professional investigation would involve testimony under oath, depositions, and subpoenas. A serious investigation of these matters also would include open and public hearings, something your committee has declined to undertake at this time.

As a constructive suggestion we add that under the Legislative Reorganization Act under which both your committee and the Senate Investigating Committee operate, you are authorized to conduct joint hearings.

Sincerely,

Fred J. Agnich
Joe Allen
Dave Allred
Bill Bass
Tom Bass
W. J. (Bill) Blythe, Jr.
Neil Caldwell
Tom Craddick
Lane Denton
Jim Earthman
Mrs. Frances Farenthold
Robert A (Bob) Gammage
Ben Z. Grant

Curtis M. Graves
Ed J. Harris
Fred Head
Zan W. Holmes, Jr.
Edmund E. (Sonny) Jones
Walter Mengden, Jr.
Tom Moore, Jr.
Paul C. Moreno
R. C. (Nick) Nichols
Dick Reed
Carlos Truan
R. L. (Bob) Vale

3437 NORTH PARKWOOD
HOUSTON, TEXAS 77021
(713) 747-4330



STATE CAPITOL
AUSTIN, TEXAS 78767
(512) 475-2477

Tom Bass

House of Representatives

Austin, Texas

July 23, 1971

Representative Menton J. Murray
Capitol Building 102 A
Austin, Texas

Dear Representative Murray:

Due to an oversight on my part the names of three representatives were omitted from the letter to you (dated 7-22-71) from twenty-five members of the House. This letter detailed their criticisms of the House General Investigating Committee by these members.

Please add the names of Representatives

Rex Braun
Dan Kubiak
Will Lee

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Lerner".

Karen Lerner
Administrative Assistant

Honorable Tom Bass
237 N. Parkwood
Houston, Texas 77021

Dear Tom:

I am in receipt of letter dated July 22, from 25 members of the House, concerning their unhappiness over the way the General Investigating Committee is operating.

I also have letter of July 23, from your office, adding three more names to the list of unhappy Representatives. Because of the second letter from you, I am presuming that if I write you, you can act for or pass the word on to the other members.

First, let me say that if you or any 2 or 3 members of your group want to appear before the committee to discuss personnel problems, we shall be glad to hear from you in a closed session. However, let me go a step further and say to you, that I have studied this problem of counsel rather thoroughly, and I am completely satisfied that our Counsel, John McShane of Dallas, is a very high type person, honest, dependable, and completely independent of any outside influence. If your group has definite information, and not mere rumors to the contrary, we shall be glad to hear from you in Austin, either Wednesday afternoon, August 11, or Thursday morning, August 12. Please let me hear from you further on this particular point.

With reference to the concern of your group over the Questionnaire that was mailed to all members of the House, let me say that if we had taken more time, I am sure the quality of the questions could have been improved. We were not too concerned about this because these questions were going only to the members of the House, and we felt it was a confidential communication.

The questions relating to the newspaper industry should not have ^{been} included, and I so advised the press the first time they questioned me about the

Honorable Tom Bass
August 6, 1971

Page -2-

Questionnaire. This constituted only 3 or 4 questions. The other 80 or 90 questions were proper, although perhaps, somewhat repetitious. Our primary concern then and now was simply to give every member of the House an opportunity to tell us anything they knew or cared to tell us about the investigation. If they felt the Questionnaire was too long, they could have written us a one-page letter like several members did, stating in effect that they knew nothing about the matters referred to therein. Or, if the members were unhappy about the Questionnaire, they could have thrown it in the first available waste basket. I see no occasion for so much concern about a confidential communication between the members of the House, unless your group was simply interested in publicity and not trying to get to the bottom of this problem.

As to your reference to open and closed meetings, we intend to have open meetings just as soon as we can do so without unduly impairing our investigating process. Despite what your group apparently thinks of this investigating committee, we intend to do a conscientious job of digging out facts. We are not interested in prosecutions. With the facts that we are digging out, the House or grand juries, or other qualified bodies can take whatever action the facts require and justify.

Yours very truly,

Menton J. Murray

MJM:gv



**General Investigating Committee
House of Representatives
Austin, Texas**

(2)

Menton J. Murray,
Chairman
P.O. Box 2244
Harlingen, Texas 78550

September 17, 1971

Honorable Gus Mutscher
Speaker of the House
Capitol Station
Austin, Texas 78711

Honorable W. S. Heatly
Drawer 1
Paducah, Texas 79248

Honorable Tommy Shannon
House of Representatives
Capitol Station
Austin, Texas 78711

Gentlemen:

You will recall that on August 13, under instructions from the House General Investigating Committee, I requested each of you to appear before this committee on August 18, concerning matters arising out of banking bills considered by the 61st Legislature and other matters pertinent to the Sharpstown State Bank and the National Bankers Life Insurance Company. At the time I mailed the letter, I did not know that all of you were scheduled to take part in a National Conference in Minnesota. When this was ascertained, we were willing to excuse you from appearing before the committee at the time set.

We have scheduled the next meeting of this committee for Thursday and Friday, October 7th and 8th, in the Old Supreme Courtroom on the Third Floor at the State Capitol. We would like for each of you to be available to appear before this committee, either the afternoon of October 7, or the morning of October 8.

Since our last meeting, we have been furnished with copies of depositions that each of you gave to the S.E.C. I have asked the committee to read and study these depositions so that we might be able to limit our questions to other than those covered by your depositions. If any of you are unable to appear on October 7th or 8th, will you please advise me promptly and indicate when you would be available.

Yours very truly,

Menton J. Murray, Chairman
House General Investigation
Committee

MJM:gv

~~78~~
(3)

H.B. No. 72

AN ACT

amending Subsection B, Article 2.01, of the Texas Non-Profit Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes), so as to allow the incorporation of a corporation whose purpose is to insure deposits for the benefit of bank and savings and loan association depositors or to insure or guarantee the savings liability of certain savings and loan associations under certain conditions and having certain privileges and immunities; and declaring an emergency._____

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subsection B, Article 2.01, of the Texas Non-Profit Corporation Act, (Article 1396-2.01, Vernon's Texas Civil Statutes), is amended so as to read hereafter as follows:_____

"B. This Act shall not apply to any corporation, nor may any corporation be organized under this Act or obtain authority to conduct its affairs in this State under this Act:_____

"(1) If any one or more of its purposes for the conduct of its affairs in this State is expressly forbidden by any law of this State._____

"(2) If any one or more of its purposes for the conduct of its affairs in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such license cannot lawfully be granted to a corporation._____

"(3) If any one or more of its purposes for the conduct of its affairs in this State is to organize Group Hospital Service, Rural Credit Unions, Agricultural and Livestock Pools, Mutual Loan Corporations, Co-operative Credit Associations, Farmers' Co-operative Societies, Co-operative Marketing Act Corporations, Rural Electric Co-operative Corporations, Telephone Co-operative Corporations, or fraternal organizations operating under the lodge system and heretofore or hereafter incorporated under Articles 1399 through 1407, both inclusive, of Revised Civil Statutes of Texas, 1925.

"(4) If any one or more of its purposes for the conduct of its affairs in this State is to operate a bank under the banking laws of this State or to operate an insurance company of any type or character that operates under the insurance laws of this State. It is specifically provided, however, that a corporation may be incorporated hereunder and may conduct its affairs and operate hereunder as a deposit protection corporation, with any one or more of its purposes being to insure or guarantee bank or savings and loan associations deposits on behalf of depositors in banks and savings and loan associations domiciled in this State in accordance with the provisions of the Texas Depositor Protection Act or as a savings protection corporation with any one or more of its purposes to insure or guarantee the savings liability of savings and loan associations domiciled in this State under rules and regulations promulgated by the Savings and Loan Section of the Finance Commission of Texas and having the same privileges and immunities as a corporation registered under the Texas Depositor Protection Act.

~~20~~
H.B. No. 72

"(5) If any one or more of its purposes for the conduct of its affairs in this State is to engage in water or sewer service and it has heretofore or is hereafter incorporated under the Acts, of 1933, Forty-third Legislature, First Called Session, Chapter 76, as amended, Acts of 1941, Forty-seventh Legislature, page 666, Chapter 407, being presently identified as Article 1434(a), Revised Civil Statutes of Texas, 1925."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Lieutenant Governor

Speaker of the House

I hereby certify that H.B. No. 72 was passed by the House on September 8, 1969, by the following vote: Yeas 123, Nays 12; and that the House concurred in Senate amendments to H.B. No. 72, on September 9, 1969, by the following vote: Yeas 120, Nays 8 and 1 present not voting.

Chief Clerk of the House

H.B. No. 72

I hereby certify that H.B. No. 72 was passed by the Senate,
as amended, on September 9, 1969, by the following vote: Yeas 25,
Nays 1. _____

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

to be known as the Texas Depositor Protection Act; providing for creation, operation and regulation of corporations to provide deposit insurance for certain bank and savings and loan association deposits within this state; defining terms; providing for severability; and declaring an emergency. _____

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. This Act shall be known as and may be cited as the Texas Depositor Protection Act. _____

Sec. 2. Unless the context indicates otherwise, the following words and phrases shall have the meaning set forth in this section: _____

(a) "Board" means the State Banking Board of Texas. _____

(b) "Bank" means any bank incorporated and existing under the laws of the State of Texas, or private or unincorporated bank existing under the laws of the State of Texas, any national banking association organized and existing under the laws of the United States and domiciled in the State of Texas, and any savings and loan association. _____

(c) "Deposit" or "deposits" means _____

(1) the unpaid balance of money or its equivalent received or held by a bank in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or other account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the bank, or a letter of credit or a traveler's check on which the bank _____

is primarily liable; provided, that, without limiting the generality of the term "money or its equivalent," any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank for collection,

(2) trust funds as defined in this Act received or held by such bank, whether held in the trust department or held or deposited in any other department of such bank,

(3) money received or held by a bank, or the credit given for money or its equivalent received or held by a bank, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or others (including funds held as dealers reserves) or for securities loaned by the bank, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes; provided, that there shall not be included funds which are received by the bank for immediate application to the reduction of an indebtedness to the receiving bank, or under conditions that the receipt thereof immediately reduces or extinguishes such an indebtedness,

(4) outstanding draft (including advice or authorization to charge bank's balance in another bank), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and _____

(5) such other obligations of a bank as the board shall find and prescribe by regulation to be deposit liabilities by general usage; provided further, that any obligation of a bank which is payable only at an office of the bank located outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, shall not be a deposit for any of the purposes of this Act or be included as part of total deposits or of an insured deposit. _____

(d) "Insured deposit" or "deposits" means the net amount due to any depositor for deposits in a member bank (after deducting off-sets), but such term shall not mean and there shall be no insurance of deposits to the extent that same are insured by the Federal Deposit Insurance Corporation and provided further that the insured deposit of a single depositor in a member bank shall not exceed \$100,000 or one-half of the bank's capital, whichever may be less. _____

(e) "Deposit Protection Corporation" means a private corporation incorporated and existing under the state Non-Profit Corporation Act which is registered by the board to operate with the powers and functions of such a corporation. _____

(f) "Member bank" means any bank as herein defined which is a member of a deposit protection corporation as herein defined. _____

Sec. 3. Any deposit protection corporation may be registered by the board by filing with the board in form acceptable to it such data as will show that the applicant meets the following standards:

(a) It has been lawfully incorporated under the provisions of the Texas Non-Profit Corporation Act. _____

(b) Its bylaws or rules must provide that any bank, upon payment of appropriate dues, assessments or fees, may become a member bank. _____

(c) Its bylaws or rules must assure a fair representation of its members in the operation thereof, the adoption of laws and bylaws, the selection of officers and directors, and all other phases of the administration of its affairs. _____

(d) Its bylaws or rules must provide for equitable apportionment and collection among member banks of all dues, assessments, fees or similar items. _____

(e) Its bylaws or rules must provide a fair and orderly procedure for discipline of member banks by expulsion, suspension, fine, censure or any other fitting penalty. _____

(f) Its proposed initial funding and subsequent dues, assessments and fees must be such as will assure sound financial operations with adequate resources for protection of insured deposits of member banks in the amounts herein provided. _____

(g) It must enter into an undertaking which will allow the board and its deputies, examiners, or other representatives to examine its affairs and report thereon to the board and to its board of directors to the same extent that the Banking Commissioner

of Texas may by law examine banks incorporated and existing under the laws of this state. _____

The board shall appoint special examiners for the purpose of examining any deposit protection corporation duly registered or seeking registration with the board under the provisions of this Act. Each examiner shall receive such compensation and shall have such qualifications as shall be fixed by the board. _____

It shall be unlawful for any corporation to exercise any of the powers or functions of a deposit protection corporation unless it is duly registered with the board under the provisions of this Act. _____

Sec. 4. The board shall cause all deposit protection corporations registered by it to be examined at the expense of such registrants at least once each calendar year. The board shall conduct a hearing at least once each calendar year for the purpose of determining the proper amount of fees, assessments or premiums which must be collected by each deposit protection corporation from its member banks in order to assure the sound financial operation and the protection of depositors by such deposit protection corporations. In determining the amount of such fees, assessments or premiums, the board shall take into consideration all relevant factors, including but not limited to those factors prescribed by law for the Federal Deposit Insurance Corporation, the anticipated volume of insured deposits, and the past experience of all deposit protection corporations and their member banks. _____

Sec. 5. All hearings held by the board under authority of this Act and all orders issued by it under authority of this Act. _____

shall be of public record but the matters and information derived by the board or its deputies, examiners or other representatives through examination and investigation of any deposit protection corporation shall be confidential and shall be released only to the deposit protection corporation involved or to any proper person duly authorized by order of a court of competent jurisdiction._____

Sec. 6. The board shall have authority to promulgate rules of procedure as well as regulations implementing the provisions of this Act. The board shall not adopt any rule or regulation without first giving notice of at least ten (10) days of a hearing upon the proposed rule or regulation. Such notice shall be mailed to all deposit protection corporations and shall be published at least once in a newspaper of general circulation throughout the State of Texas. Such notice shall include the text of the proposed rule or regulation._____

Sec. 7. All deposit protection corporations shall be exempt from any form of taxation by the State of Texas or any political subdivision or municipality thereof, it being the intent of the Legislature to provide protection to depositors at the lowest possible cost. The operations of a deposit protection corporation which are in conformity with this Act and the lawful rules and regulations of the board shall be exempt from the operation of the following laws of this state and shall not be subject thereto: the Insurance Code of Texas; the Texas Securities Act; and Title 126, Revised Civil Statutes of Texas, 1925, as amended._____

Sec. 8. The board shall deny any application for registration as a deposit protection corporation unless the applicant._____

affirmatively meets the standards set forth in Section 3 hereof.

Each deposit protection corporation shall have an affirmative duty to inform the board of any material change in its financial condition or organizational structure. If at any time it should appear to the board that a deposit protection corporation does not meet the standards of Section 3 hereof, it may suspend its registration until the default is corrected or may revoke such registration.

There shall be no denial, suspension or revocation of registration by the board unless the applicant or registrant has been given notice and opportunity for hearing and any action of the board must be expressed in a written order which sets forth the reasons or basis for such action.

Sec. 9. In addition to any disciplinary provisions of the bylaws or rules of a deposit protection corporation, any deposit protection corporation may suspend or expel a member bank upon a finding by such deposit protection corporation that the member bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of the member bank or the member bank is in an unsafe or unsound condition to continue operations or the member bank has violated an applicable law, rule, regulation or order. There shall be no suspension or expulsion by the deposit protection corporation unless the member bank has been given notice and opportunity for hearing and any action of the deposit protection corporation must be expressed in a written order which sets forth the reasons or basis for such action.

Sec. 10. Any deposit protection corporation which may be aggrieved by any act, order, rule or regulation of the board and

any member bank which may be aggrieved by any act, or order of a deposit protection corporation, or an order of the board regarding fees, premiums or assessments, shall have the right to appeal from such action by filing suit in a district court located in the county where such appellant may be domiciled, or in a district court in Travis County, Texas. Such appeal shall be heard by the district court de novo and the applicable laws and rules for civil proceedings in the courts of this state, including the right of appeal, shall prevail.

Sec. 11. This Act shall be cumulative of all existing laws and nothing herein is intended to repeal or diminish any existing law.

Sec. 12. If any word, phrase, clause, sentence, section or part of this Act or its application to any given circumstance shall be held to be invalid by a court of competent jurisdiction, such holding shall not affect any other word, phrase, clause, sentence, section or part of this Act or other application thereof; and to this extent, the provisions of this Act are declared to be severable.

Sec. 13. The fact that the depositors in banks in this state are limited in protection of insured deposits to the sum of \$15,000 under federal law and the fact that such sum is totally inadequate in view of inflationary pressures on the economy and the fact that the citizens of this state should be provided with a mechanism for protection of deposits in excess of \$15,000, create an emergency and an imperative public necessity and that the Constitutional Rule

H.B. No. 73

requiring the reading of bills on three several days shall be suspended and the same is hereby suspended, and this Act shall be in force and effect from and after its passage, and it is so enacted. _____

Lieutenant Governor

Speaker of the House

I hereby certify that H.B. No. 73 was passed by the House on September 8, 1969, by the following vote: Yeas 127, Nays 7; and that the House concurred in Senate amendments to H.B. No. 73 on September 9, 1969, by the following vote: Yeas 123, Nays 8 and 1 present not voting. _____

Chief Clerk of the House

I hereby certify that H.B. No. 73 was passed by the Senate, as amended, on September 9, 1969, by the following vote: Yeas 24, Nays 1. _____

Secretary of the Senate

APPROVED: _____

Date

Governor



(4)

The State of Texas
Secretary of State

I, MARTIN DIES, JR., Secretary of State, of the State of Texas, DO HEREBY CERTIFY that the attached is a true and correct copy of the Governor's Veto Proclamation for House Bill 72 and House Bill 73, 61st Legislature, Second Called Session, 1969, as signed by the Governor on September 29, 1969 and filed in the office of Secretary of State on September 29, 1969, at 5:30 P.M.



IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin this

25th day of June, A. D. 19 71.

Martin Dies Jr.
Secretary of State

PROCLAMATION

BY THE

Governor of the State of Texas

41-1378

TO ALL TO WHOM THESE PRESENTS SHALL COME:

House Bill 72 and House Bill 73 as passed by the Legislature would provide for insurance protection on bank deposits over and above the present \$15,000.00 per account under the Federal Deposit Insurance Corporation. I am in accord with the basic purpose of providing full protection for deposits on their bank accounts but I am not satisfied that the approach taken by these bills is the proper one and for that reason I am calling upon the Finance Commission to make a study of the best solution to this problem to present to the next Legislature. Under the provisions of Article IV, Section 14, of the Constitution, I am herewith vetoing and filing with the Secretary of State House Bill 73, 61st Legislature, Second Called Session, the Texas Depository Protection Act, and a companion bill, House Bill 72, 61st Legislature, Second Called Session, with the following objections and for the following reasons:

1. These bills provide for deposit insurance to be furnished by private non-profit corporations. This proved unsatisfactory in Texas between the years 1904 - 1926. There is also no provision which would limit the number of corporations providing this insurance and therefore could lead to a large number of small weak private corporations which could not provide the protection anticipated.

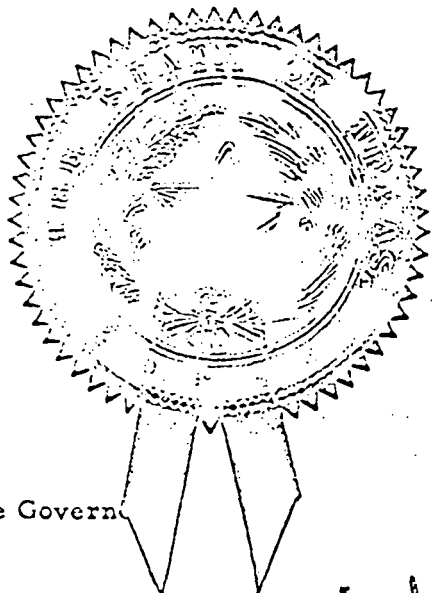
2. I have some concern that the bill would be discriminatory as regarding banks in our state which have less than \$200,000 in capital in that their deposits could not be insured to the extent of larger banks.

3. There is also a problem as to possible discrimination between state and national banks since some state banks, not members of the Federal Reserve System might cancel their F. D. I. C. membership relieving them of certain restraints and limitations as to interest paid on savings accounts or certificates of deposits. This same situation could arise between state chartered and federal savings and loan associations. There is also great concern as to the ultimate effects of the withdrawal from federal supervision of banks and savings and loan associations operating under state charters.

4. I am advised that no depositor has lost money through the closing of any Texas bank in the past three years and that there has not been opportunity for full public hearings on these bills or on this particular approach to this problem.

For all of the foregoing reasons, I feel that there is no emergency need for this legislation at this time and that these bills should be vetoed to provide time for a full and complete study of possible solutions to be considered by a future session of the Legislature.

House Bill 72 and House Bill 73, 61st Legislature, Second Called Session were presented to me less than ten (10) days before adjournment of the Legislature and I am herewith vetoing and filing them, together with this proclamation, with the Secretary of State under the provisions of Article IV, Section 14 of the Texas Constitution.



By the Governor

Martin Dies
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of State to be affixed hereto at Austin, this the 29th day of September, A. D., 1969.

Preston Smith
PRESTON SMITH

GOVERNOR OF TEXAS

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:30 P.M. O'CLOCK

SEP 29 1969
Martin Dies
Secretary of State

1 BEFORE THE
2 HOUSE GENERAL INVESTIGATING COMMITTEE
3 AUSTIN, TEXAS

4
5 IN THE MATTER OF
6 HOUSE BILL 72 and
7 HOUSE BILL 73

8
9 HEARING

10
11 BE IT REMEMBERED that on Wednesday, the 18th
12 day of August, 1971, beginning at 10:00 o'clock a.m., in
13 the old Supreme Court Room, State Capitol Building, Austin,
14 Texas, the above-entitled matter came on for hearing
15 before the HONORABLE REPRESENTATIVE MENTON J. MURRAY,
16 Chairman, and the following proceedings were reported by
17 Walter H. Hickman, a Notary Public in and for Travis
18 County, Texas.

19
20 MEMBERS PRESENT

21 REPRESENTATIVE MENTON J. MURRAY, Chairman
22 REPRESENTATIVE DeWITT L. HALE
23 REPRESENTATIVE CLYDE HAYNES, JR.
24 REPRESENTATIVE JAMES E. NUGENT
25 REPRESENTATIVE JAMES L. SLIDER

1 ALSO PRESENT

2 MR. JOHN McSHANE, House Counsel

3 MR. HUBERT GREEN, Attorney for Senate Investiga-
4 ting Committee

5 MR. MORTON SUSMAN, Attorney for Frank W. Sharp.

6 MR. JERRY HILL, Attorney for Frank W. Sharp.

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PROCEEDINGS

CHAIRMAN MURRAY: Ladies and gentlemen, the House General Investigating Committee, which was appointed pursuant to House Simple Resolution Number 69, will now convene in its first open session.

Our investigation to date has been directed towards involvement of legislators and public officials in any misconduct that might have occurred either in connection with the alleged National Bankers stock fraud or other related subjects. Now, we are particularly concerned with House Bills 72 and 73, passed in the Sixty-ninth Session of the Texas Legislature to determine whether in the passage of that bill there was any conduct unbecoming a member of the legislature or of a state official.

Let me call your attention to the rules and regulations of the House which this Committee is operating under, and if anyone is concerned about any of these rules and regulations we have some copies up here of the rules and regulations that we will be glad to pass out to anybody interested.

Let me particularly call your attention to the fact that all questioning of witnesses will be done by our counsel, John McShane, or by a member of the Committee. If you feel that you have a question, someone in the audience

1 that might help our investigation, you are privileged to
2 put it down in writing and pass it up to us, and if we feel
3 it is in order and will assist us, why, we'll ask such a
4 question.

5 Let me also say to you that as far as we are
6 concerned, we are operating under instructions from the
7 House of Representatives. We've got a serious and delicate
8 matter to investigate and we're going to do so to the best
9 of our ability. We hope that you will cooperate with us
10 in this work that we are undertaking.

11 Without further ado I'm going to turn the matter
12 over to our legal counsel, Mr. McShane.

13 MR. McSHANE: Mr. Chairman, our first witness
14 will be Mrs. Dorothy Hallman. Will you call Mrs. Hallman,
15 please.

16
17 MRS. DOROTHY HALLMAN

18 was called as a witness and, after having been first duly
19 sworn, testified as follows:

20 EXAMINATION

21 BY MR. McSHANE

22 Q Will you please state your name for the record,
23 ma'am?

24 A Dorothy Hallman.

25 Q And for the record will you please state your

1 address?

2 A 1507 Drake Avenue, Austin, Texas.

3 Q And again for the record, would you please state
4 your occupation?

5 A I'm chief clerk of the House of Representatives.

6 Q How long have you been in this position?

7 A Since January of 1955.

8 Q And are you custodian of records reflecting the
9 legislative history of the bills that are entered and
10 passed in the Texas Legislature?

11 A I am.

12 Q And specifically, do you have custody of records
13 reflecting the legislative history of House Bills 72 and
14 73 in the second called session of the Sixty-first
15 Legislature?

16 A I have.

17 Q It is the desire of the Committee to incorporate
18 this legislative history into the record of this proceed-
19 ing. Could you proceed to give us the legislative history
20 of these bills at this point?

21 A May I ask whether or not you would like to have
22 mentioned here as a matter of record the fact that House
23 Bill 52 and 53 of the first called session of this Sixty-
24 first Legislature were identical bills?

25 Q Yes, ma'am. I believe it would be appropriate for

1 going to have untold confusion on these exhibits.

2 MR. McSHANE: That will be fine. Let's identify
3 the bills in that manner, then.

4 (House Bill 52 was marked
5 "Exhibit 1" for
6 identification.)

7 (House Bill 53 was marked
8 "Exhibit 2" for
9 identification.)

10 A During the second called session of the Sixty-
11 first Legislature, House Bills 72 and 73 by Tommy Shannon
12 were filed on September 5, 1969. On that same day they
13 were read first time and referred to Committee on Banks
14 and Banking.

15 MR. HALE: I didn't hear the dates.

16 THE WITNESS: September 5.

17 MR. McSHANE: Could we mark those bills for
18 identification at this time?

19 (House Bill 72 was marked
20 "Exhibit 3" for
21 identification.)

22 (House Bill 73 was marked
23 "Exhibit 4" for
24 identification.)

25 A These bills were reported favorably out of
committee and sent to the printer, printed, distributed and
referred to the Committee on Rules at 1:30 p.m. on September 8.

The motion to suspend all necessary rules to

1 consider prevailed on September the 8th, and amendment was
2 offered by Stuart and Finney on the floor of the House.

3 Q Would you read that amendment to us, please,
4 ma'am?

5 A All right. Amendment Number 1 by Stuart and
6 Finney.

7 "Amend House Bill Number 72 of the first
8 printing as follows:

9 Add the word 'or savings and loan associa-
10 tions' immediately following the word, 'bank,' on
11 line 46, page 1."

12 Number 2: "Add the words, 'buildings and
13 loan associations' immediately following the word,
14 'banks,' on line 47, page 1."

15 This amendment was adopted by the House by a
16 nine record vote.

17 Q May we mark that amendment for identification at
18 this time?

19 (Amendment was marked
20 "Exhibit 5" for
identification.)

21 A The bill was read the second time and ordered
22 engrossed as amended. The constitutional rule requiring
23 bills to be read on three several days was suspended by a
24 record vote of 123 ayes and 14 no's. It was read the third
25 time and finally passed by a record vote of 123 ayes, 12

1 no's, motion to reconsider and table the vote prevailed.
2 It was sent to engrossing. Then it was sent to the Senate.
3 In the Senate—now I have taken the records of the Senate
4 from their Senate Journal, the action that was taken on
5 this bill while it was there.

6 It was read first time and referred to the
7 Committee on County District and Urban Affairs. The
8 motion to suspend Senate Rule 100 lost by a 13 ayes, 9
9 no's. It was reported favorably out of the Committee and
10 ordered not printed. It was read the second time and
11 amendments by Senator Wilson and Senator Schwartz were
12 offered.

13 Q Would you read those amendments, please?

14 A I have only Senator Wilson's amendment since they
15 reconsidered the action taken on it after Schwartz' amend-
16 ment and they removed his amendment from the bill, so I
17 have no copy of it.

18 The Wilson amendment says, "Amend House Bill 72
19 by striking the period at the end of the last sentence of
20 quoted subsection four of section one and adding the follow-
21 ing: 'or as a savings protection corporation, with any-
22 one or more of its purposes to insure or guarantee the
23 savings liability of savings and loan associations domiciled
24 in this State under rules and regulations promulgated by
25 the savings and loan section of the Finance Commission of

1 Texas, and having the same privileges and immunities as a
2 corporation registered under the Texas Depositors Protection
3 Act.'" "

4 This amendment was adopted by the Senate.

5 Q May we mark that amendment for identification,
6 please?

7 (Amendment marked as
8 "Exhibit 6" for
identification.)

9 A The bill was read the third time and passed by
10 24 ayes, 2 no's and the vote on final passage of House Bill
11 72 was reconsidered. On motion of Senator Wilson and by
12 unanimous consent of the vote by which the Amendment No. 2,
13 Schwartz' Amendment, was adopted, was reconsidered. And
14 on motion of Senator Schwartz and by unanimous consent
15 Amendment No. 2 was withdrawn.

16 Q Ma'am, are you saying that is the Schwartz
17 Amendment that was withdrawn?

18 A That is the Schwartz Amendment which I do not
19 have a copy of. They put it on and then reconsidered the
20 action and took it off.

21 House Bill 72 as amended was again passed, the
22 third reading and constitutional rule having already been
23 suspended, the bill passed by 25 ayes and 1 no, and it was
24 returned to the House from the Senate. All necessary rules
25 were suspended in the House and we concurred in Senate

1 Amendment by 120 ayes and 8 no's. It was sent to the
2 Enrolling Clerk.

3 Q Do you have a copy of the bill there as sent to
4 the Enrolling Clerk?

5 A Yes, sir, I have.

6 Q May we also mark that for identification, please?

7 MR. HALE: Mr. Chairman, I would like to request
8 that the witness date everything in her testimony here.
9 When these things happen. Does she have that information
10 there as she goes through?

11 A I have it on my chronological list. All of this
12 up to the point where it came back from the Senate was on
13 September 8. It was returned from the Senate on September
14 9.

15 CHAIRMAN MURRAY: Mrs. Hallman, do I understand
16 that all of the action in the Senate was on September the
17 8th?

18 A Yes, sir.

19 CHAIRMAN MURRAY: Fine.

20 A Yes, sir. The day it came back and we concurred
21 in Senate Amendments it was enrolled. This was September
22 9. It was signed by the Speaker in the presence of the
23 House. Also signed by the Lieutenant Governor in the pre-
24 sence of the Senate and filed with the Governor on that
25 date.

1 Q All of these actions took place on September 9?

2 A September 9.

3 September the 29th the bill as enrolled and
4 signed by the Speaker and Lieutenant Governor was filed in
5 the office of the Secretary of State by the Governor at
6 5:30 p. m. I have certified copies from the Secretary of
7 State with the enrolled bill and signature. And on that
8 same date, the Governor—which is September 29, 1969—
9 the Governor vetoed this bill, and a copy of his veto
10 message is in this certification.

11 Q Would you please mark the copy of the veto
12 message for identification?

13 A All right.

14 (The veto message was
15 marked "Exhibit 7" for
identification.)

16 A The action on—

17 MR. NUGENT: Mr. Chairman?

18 Mrs. Hallman, may I see that veto message, please?

19 THE WITNESS: Yes, sir.

20 Q Mrs. Hallman, while you're at it, could we have
21 all of the exhibits up here, please?

22 A Yes, sir.

23 Q Do you have any further document or testimony
24 relating to the legislative history of House Bills 72 and
25 73?

1 A The action on House Bill 73 is substantially
2 the same. There are two amendments which were placed on
3 it and they, of course, would be different from the amend-
4 ments on 72.

5 Q All right. Now let's back up just a little
6 bit. We again, though, are talking about September the
7 8th?

8 A Yes, sir.

9 Q And we're talking about the process of the bills
10 through the House of Representatives at this point. Is
11 that correct?

12 A That's correct.

13 Q And we're talking about now House Bill 73 which
14 was also amended two times. Is that correct?

15 A That's correct.

16 Q Would you read those amendments to us, please?

17 A All right. On September 5th it was filed.
18 September 8th it was read first time and referred to
19 Committee on Banks and Banking.

20 September 8, reported favorably and sent to the
21 printer, printed, distributed and referred to the Committee
22 on Rules at 1:30 p. m.

23 September 8, 1969, motion to suspend all necessary
24 rules to consider prevailed.

25 September 8, an amendment by Stuart and Finney

1 was read and adopted, and I quote:

2 "Amend subsection B of Section II to read as
3 follows: B) 'Bank,' means any bank incorporated and
4 existing under the laws of the State of Texas, any
5 national banking association, organization and existing—"
6 I'm sorry—"existing under the laws of the State of Texas,
7 any national banking association organized and existing
8 under the laws of the United States and domiciled in the
9 State of Texas and any savings and loan association."

10 This was read and adopted by a non-record vote.

11 Q Can we mark copies of those amendments for
12 identification, please.

13 (The amendment was marked
14 "Exhibit 8" for
15 identification.)

16 MR. HALE: Mr. Chairman.

17 CHAIRMAN MURRAY: Mr. Hale?

18 MR. HALE: Whose amendment was that?

19 THE WITNESS: This was Finney and Stuart.

20 MR. HALE: Finney and Stuart. This was on House
21 Bill 73?

22 THE WITNESS: Right.

23 A On September 8 it was read second time, ordered
24 engrossed as amended. The constitutional rule was suspended
25 by 125 ayes, 10 no's.

September 8 it was read third time and finally

1 passed by 127 ayes and 7 no's and sent to the Engrossing
2 Clerk. The motion to reconsider and table prevailed. It
3 was sent to the Senate.

4 On September 9 it was read first time and
5 referred to the Committee on County, District and Urban
6 Affairs. September 9, motion to suspend Senate Rules 13,
7 30 and 36, and the constitutional rule requiring bills to
8 be read on three several days prevailed and House Bill 73
9 was placed on second reading.

10 Q Excuse me, ma'am. Let's back up for just a
11 minute. I don't believe we marked the copy of the bill as
12 it went to the House Engrossing Clerk. In other words, is
13 the last exhibit we have the amendment?

14 A Yes.

15 Q Could we mark that copy for identification at
16 this time?

17 (Copy of the Bill was
18 marked "Exhibit 9"
for identification.)

19 MR. HALE: What is Exhibit Number 9?

20 MR. McSHANE: Exhibit Number 9 is the copy of the
21 House Bill as it went to the Engrossing Clerk.

22 A With the amendment.

23 MR. McSHANE: With the amendment.

24 A We are now on House Bill 73 in the Senate. On
25 September 9 it was placed on second reading and passage to

1 third, and on the third reading and final passage a motion
2 prevailed by 20 ayes and 2 no's.

3 On second reading and passage to third the
4 Amendment by Schwartz was adopted by 26 ayes and no no's.

5 Q Would you read that amendment to us at this
6 time, please?

7 A All right.

8 "Amend House Bill 73 by inserting a comma after
9 the word 'Texas,' where it first appears in Section
10 II-b, and adding the words, 'or private or
11 unincorporated bank existing under the laws of
12 the State of Texas.'"

13 This is the Schwartz Amendment.

14 Q Now, Mr. Court Reporter, would you please mark
15 that for identification?

16 A It was adopted by a vote of 26 ayes and no no's
17 in the Senate.

18 (The Schwartz Amendment was
19 marked as "Exhibit 10"
for identification.)

20 A On September 9 it was returned from the Senate
21 as amended, and motion to suspend all necessary rules to
22 consider prevailed. September 9, motion to concur in the
23 Senate Amendments prevailed by 123 ayes, 8 no's and 1
24 "present."

25 September 9, sent to the Enrolling Clerk.

1 September 9, signed by the Speaker in the pre-
2 sence of the House after enrollment.

3 Q Ma'am, do you have a copy of the bill as sent
4 to the Enrolling Clerk?

5 A Right.

6 MR. McSHANE: May we mark that at this time,
7 please.

8 A I believe we have already marked this.

9 (The above-referred to
10 document is previously
 marked as "Exhibit 9.")

11 A It was signed on September 9 by the Lieutenant
12 Governor in the presence of the Senate and filed with the
13 Governor on that date.

14 MR. HALE: Mr. Chairman?

15 CHAIRMAN MURRAY: Mr. Hale?

16 MR. HALE: As I understood Exhibit 9 was House
17 Bill 73 as it was engrossed in the House.

18 THE WITNESS: Right. And you want a copy of the
19 enrolled bill.

20 MR. HALE: The enrolled bill was supposed to have
21 been the one that counsel was asking for there a moment
22 ago which would include the Schwartz Amendment.

23 THE WITNESS: Right.

24 MR. McSHANE: That bill apparently has not been
25 marked.

1 THE WITNESS: This is true.

2 (The enrolled Bill was
3 marked as "Exhibit 11"
4 for identification.)

5 A It was filed with the Governor on September 9,
6 1969, and on September 29, filed in the office of the
7 Secretary of State at 5:30 p. m., without the Governor's
8 signature to it. It also was included in the same veto
9 message which vetoed House Bill 73, and it is included in
10 this.

11 MR. McSHANE: Mr. Chairman, I have no further
12 questions of this witness at this time.

13 CHAIRMAN MURRAY: Do any members of the Committee
14 have any questions of the witness?

15 MR. NUGENT: I have a question.

16 CHAIRMAN MURRAY: Mr. Nugent has a question.

17 EXAMINATION

18 BY MR. NUGENT

19 Q Mrs. Hallman, were any of these bills handled by
20 your office in any manner different from the normal handling
21 of bills that are filed with you?

22 A No, sir.

23 Q Was there any request by any member of the
24 House to expedite or give special handling to these bills?

25 A None whatsoever.

1 MR. NUGENT: I have no further questions.

2 CHAIRMAN MURRAY: Mr. Hale?

3
4 EXAMINATION

5 BY MR. HALE

6 Q Mrs. Hallman, first let me thank you for doing
7 a very excellent job of compiling this information.

8 Did you attempt to obtain a copy of the Schwartz
9 Amendment to House Bill 72 that was adopted and then later
10 taken off on reconsideration?

11 A I did not go to the Senate for it. Now, Mr.
12 Hale, let me say this. I have backed up to the best of
13 my ability my remarks by excerpts from the House and
14 Senate Journals on all of the action taken in both Houses.

15 Q What happens to an amendment if it is reconsidered
16 and then voted down?

17 A They take it off.

18 Q You don't destroy the amendment, do you? Isn't
19 it filed somewhere as a matter of record?

20 A We don't destroy them in the House. We attach
21 it anyway. In the Senate they do not attach it to a bill
22 if it is not adopted. This is their policy.

23 Q Do you know what happens to those amendments in
24 the Senate if they are not adopted?

25 A I have no idea.

1 Q Mrs. Hallman, Mr. Nugent asked you if any member
2 of the House had asked you to expedite the passage of any
3 one of these bills. Let me go one step further and ask
4 you, did these bills attract any particular attention on
5 the part of outsiders, people outside the legislature that
6 you could tell?

7 A No, sir.

8 Q Did you have any particular inquiries about the
9 progress of these bills from anybody inside or outside the
10 legislature?

11 A None whatsoever. I had no idea there was any
12 interest of any kind in it until the Governor vetoed it.

13 Q Was there anything about either one of these
14 bills that in any way attracted your attention as being
15 unusual or peculiar at the time the bills were going
16 through?

17 A No, sir.

18 MR. HALE: Thank you.

19 CHAIRMAN MURRAY: Any other questions?

20 MR. NUGENT: I have one.

21 CHAIRMAN MURRAY: Mr. Nugent.

22 EXAMINATION

23 BY MR. NUGENT

24 Q In the copies of the Senate and House Journals
25

1 which you have there, is there a copy reflected of the
2 Schwartz Amendment?

3 CHAIRMAN MURRAY: While Mrs. Hallman is looking
4 for that, let me do something I should have done at the
5 very beginning.

6 For the benefit of some of you who may not know
7 the members of this Committee, I would like to introduce
8 them. From the far left to the right is Jim Nugent of
9 Kerrville. Next to me here is our counsel, John McShane,
10 of Dallas.

11 On my right is Clyde Haynes, Representative Clyde
12 Haynes, and next to him is Representative Jim Slider, and
13 next to him is Representative DeWitt Hale, and at the end
14 is Mr. Green, who is counsel for the Senate Investigating
15 Committee.

16 I wanted you to know who was here and in case you
17 start throwing tomatoes, pick out the right guy.

18 MR. NUGENT: Mr. Chairman, maybe I can shorten
19 this if I might ask Mr. Green a question.

20 CHAIRMAN MURRAY: All right, sir.

21 MR. NUGENT: Mr. Green, would you secure for us
22 a copy of the Schwartz Amendment and let us have it this
23 afternoon?

24 MR. GREEN: I have that right here, Mr. Nugent.

25 MR. NUGENT: May I have a copy of it, please, sir?

1 MR. GREEN: Yes, sir. It is the identical
2 amendment added to House Bill 73. It simply appears that
3 when Senator Schwartz offered the amendment that he
4 offered it to the wrong bill. They found that out later
5 apparently and went through it and it was then offered to
6 House Bill 73 where it was more appropriate. You remember
7 72 was the Non-profit Corporation Act Amendment. The
8 amendment that he offered to House Bill 73 simply included
9 the private, or unincorporated banks in that measure, and
10 that was adopted to 73 and it was offered apparently by
11 mistake to House Bill 72. It was the identical amendment
12 that she gave and was offered to House Bill 73.

13 MR. NUGENT: And that's the reason it was with-
14 drawn?

15 MR. GREEN: This is a matter of conclusion. I
16 mean the record only shows it was withdrawn and was added
17 by mistake to the wrong bill.

18 A This amendment, the Schwartz Amendment, is
19 reflected on House Bill—I mean on Senate Journal, page
20 168 and I think you are substantially correct. In fact
21 they offered it to the wrong bill.

22 CHAIRMAN MURRAY: Any other questions, Mr. Nugent?

23 MR. NUGENT: I have one.

24 Q Mrs. Hallman, have you read the first two lines
25 of the Governor's veto message? Let me read it to you.

1 "House Bill 72 and House Bill 73, as passed
2 by the Legislature, would provide for insurance
3 protection on bank deposits over and above the
4 present \$15,000.00, et cetera."

5 Have you any knowledge of that?

6 A No, sir.

7 CHAIRMAN MURRAY: Mr. Haynes has a question, Mrs.
8 Hallman.

9
10 EXAMINATION

11 BY MR. HAYNES

12 Q Mrs. Hallman, in your experience in working for
13 the legislature over the years, the manner in which these
14 two bills were expedited through both chambers, was it any
15 more speedily than any other legislation that you might
16 have noticed at any time in your service?

17 A I wouldn't think so, Mr. Maynes. Certainly all
18 effort is made to push these things on through, and a
19 called session is at best a short session. We usually move
20 everything as rapidly as we can.

21 Q Thank you, ma'am.

22 A I find it no different than any other legislation

23 Q Thank you, ma'am.

24 CHAIRMAN MURRAY: Any other questions by the
25 Committee?

1 MR. NUGENT: I have one further question, Mr.
2 Chairman.

3 CHAIRMAN MURRAY: Excuse me.
4

5 EXAMINATION

6 BY MR. NUGENT

7 Q Let me enlarge my original question. Were there
8 any senators that asked of you or your office any special
9 or expeditious treatment of these bills in any way?

10 A No, sir.

11 MR. NUGENT: Thank you.

12 CHAIRMAN MURRAY: Last call. Any other questions?
13 That's all, Mrs. Hallman. You're excused and we
14 appreciate your courtesies extended to the Committee.

15 Thank you very much, Mrs. Hallman.

16 MR. McSHANE: Mrs. Hallman, may I have those
17 other exhibits, the ones that we marked subsequently to the
18 last time we handed them up here?

19 THE WITNESS: I'll give you the whole file, Mr.
20 McShane.

21 (The witness, Mrs. Dorothy Hallman, was excused.)

22 MR. McSHANE: Mr. Chairman, our next witness will
23 be Mr. Eugene Palmer.
24
25

MR. EUGENE PALMER

was called as a witness and, after having been first duly sworn, testified as follows:

EXAMINATION

BY MR. McSHANE

Q Would you state your name for the record, please, sir?

A Eugene Palmer.

Q Would you state your address for the record?

A 4018 North Hills Drive, Austin, Texas, 78731.

Q And again for the record, sir, what is your occupation?

A I am a practicing lawyer.

Q And how long have you been practicing law, Mr. Palmer?

A Since February of 1958.

Q Are you a member—

MR. HALE: Mr. Chairman?

CHAIRMAN MURRAY: Mr. Hale?

MR. HALE: It's just been called to my attention that we're not swearing these witnesses. I think we should put everyone of them under oath.

CHAIRMAN MURRAY: That's correct. It's my mistake.

Mr. Palmer, will you rise and hold up your right-

1 hand?

2 (The witness was sworn by the Chairman.)

3 MR. HALE: Mr. Chairman, I don't want to try to
4 dominate this committee hearing but I think at this time
5 I think the Chairman ought to advise every witness that
6 appears before this Committee at the time he is sworn that
7 his testimony is being recorded; that anything he says can
8 be used against him if it is incriminating in any way and
9 that he has the right to counsel of his own selection if
10 there is any doubt in his mind about him being incriminated
11 by any testimony. I think every witness should be so warned.

12 CHAIRMAN MURRAY: Mr. Palmer, you are so warned.

13 A Thank you, sir. I have no intention of envoking
14 any claim of immunity and am pleased to be here in public
15 to respond to the Committee's questions.

16 CHAIRMAN MURRAY: We appreciate your cooperation,
17 Mr. Palmer.

18 Q All right. Mr. Palmer, I believe you stated that
19 you have been practicing law since February of 1958?

20 A That's correct, sir.

21 Q Are you a member of a law firm?

22 A Yes, I am.

23 Q What is the name of that firm?

24 A Palmer and Steed, S-T-E-E-D.

25 Q And how long have you been in the firm of Palmer

1 and Steed?

2 A Since February 1, 1971.

3 Q And who were you with before that?

4 A Well, over a long period of time I was with
5 various people.

6 Q Let's just go back, work backwards chronologically.
7 Who were your partners before you were in the law firm of
8 Palmer and Sneed?

9 A For about a month, my partners were John Osorio
10 and Waggoner Carr.

11 From April 1, 1969, to December 31, 1970, I was
12 a partner in a larger firm composed of various partners
13 and associates. Prior to that time I was for several
14 years engaged as a partner with Mr. John Osorio.

15 Q Now that longer period of time when you were a
16 partner with Mr. Osorio, would you give us those dates
17 again, please?

18 A Well, I went to work for Mr. Osorio as an
19 employee when I graduated from law school, and I don't
20 know the precise dates. Several years later he made me a
21 partner.

22 Q Now, this brief month when you were a partner
23 with Mr. Osorio and Mr. Carr, was that immediately prior
24 to February 1st, 1971?

25 A Yes, sir.

1 Q When you went to work for Mr. Osorio just out of
2 law school, was this in a law firm?

3 A Well, no, sir. He was an individual practitioner
4 and I was the only associate in the office at that time.
5 It varied later.

6 Q Now, basically, Mr. Palmer, what type of a law
7 practice do you have?

8 A I would say general civil practice.

9 Q General civil?

10 A Yes, sir.

11 Q Do you have any particular emphasis?

12 A No, I wouldn't say any particular emphasis except
13 to the extent that almost all lawyers who have practiced
14 here in Austin do a lot of practice before administrative
15 agencies.

16 Q So you would say, if you could isolate a par-
17 ticular specialty or emphasis, it would be your administra-
18 tive practice. Is that a fair statement?

19 A Yes, sir, although as you know under the rules of
20 the Bar Association, nobody is a specialist.

21 Q Yes, sir. I'm well aware of that.

22 Q In the course of your practice, do you have
23 occasion to represent clients—or let me phrase it another
24 way.

25 Do you have occasion to engage in what is generally

1 referred to as legislative practice?

2 A Yes, I have done that in the past as a member of
3 the law firm.

4 Q Would you basically describe what this general
5 term, "legislative practice" connotes in the profession?

6 A Well, I would say it would connote representing
7 the interests of your clients before the Legislature,
8 monitoring legislation that is there, and reporting back to
9 the client, and talking to members of the Legislature in
10 the interest of your client.

11 Q All right, sir. Engaged in these duties, in
12 behalf of your clients, do you have occasion to draft
13 legislature?

14 A Both in that capacity and in a more or less civic
15 capacity at times.

16 Q Would you elaborate on the civic capacity aspect
17 of it?

18 A Well, I have been a member of the State Bar
19 Committee for several years that has engaged in hundreds
20 of hours in drafting of various amendments to the Securities
21 Law. I have done some work in the past for the Texas
22 Association of Retarded Children. Things of that nature.

23 Q In this civic capacity, have you also done some
24 drafting on this new family code?

25 A No, sir. I had nothing to do with that.

1 Q All right. How long would you say that you have
2 been doing legislative drafting?

3 A Oh, off and on since 1959.

4 Q A little over ten years then. Is that it?

5 A Yes, sir.

6 Q During the course of these ten years, would it
7 be a fair statement that you have had literally hundreds
8 of hours of legislative drafting experience?

9 A I never had thought of it in that manner, but
10 I'm sure that is a fair statement.

11 MR. McSHANE: Mr. Seargent, would you please hand
12 these documents to the witness?

13 (Documents handed to witness.)

14 Q Mr. Palmer, I am handing to you what's been
15 marked as Committee Exhibit Number 3 and Committee Exhibit
16 Number 4.

17 A Yes, sir.

18 Q Would you look at those documents and identify
19 them for us, please?

20 A Yes, sir. I can identify Exhibit 3 as being a
21 reprint or retyping of a bill which I drafted originally.
22 I cannot identify the attachment which appears to be an
23 amendment.

24 Q That's fine, sir.

25 A And my testimony with respect to Exhibit 4 would

1 be the same. I do not know anything about the amendment
2 and cannot identify it.

3 Q Now, Mr. Palmer it is then your testimony that
4 you did in fact draft the bills reflected here as Committee
5 Exhibit Number 3 and Committee Exhibit Number 4?

6 A Yes, sir.

7 Q With the reservation that you did not draft the
8 amendments?

9 A That is correct.

10 Q Now, Mr. Palmer, would you basically, starting
11 with Committee Exhibit Number 3, outline and describe the
12 effect of these bills?

13 A Well, I think perhaps I should go first to
14 Committee Exhibit Number 4 and work backwards from it in
15 order to provide a logical sequence.

16 Q That will be fine.

17 A My purpose as the draftsman of these bills was
18 to provide a vehicle equivalent to the Federal Deposit
19 Insurance Corporation which, at the state level, could
20 provide deposit insurance for any incorporated bank in the
21 state, be it national or state, above and beyond or in
22 excess of that insurance protection provided by the F.D.I.C.

23 This required a considerable amount of research upon
24 my part, and if you would like for me to detail the steps
25 involved in the research I will be happy to.

1 Q Yes, sir, I would.

2 A I was first advised that the bill should be a
3 public or municipal corporation or a political subdivision
4 of the state, which as you know, the F.D.I.C. is with
5 respect to the Federal Government.

6 Q When you say, "You were advised that the bill
7 should be done in this way," who advised you?

8 A Mr. John Osorio.

9 Q Okay, sir.

10 A In researching the matter, I immediately ran
11 across numerous provisions in the Texas Constitution which,
12 in my view, would forbid such a corporation from function-
13 ing, because there are various prohibitions against the state
14 or any of its political subdivisions or municipal corpora-
15 tions granting credit or lending their credit to another
16 or guaranteeing the debts of another, and, of course, that
17 would be the primary function of the entity we're talking
18 about here.

19 So I then determined to find some way that would
20 preserve a strict regulatory feature and yet achieve the
21 goal without being unconstitutional. The thought that
22 came to my mind was the operation of the National Association
23 of Securities Dealers under the Federal Maloney Act, and
24 also the operation of the major stock exchanges. These
25 bodies are semi-autonomous and have regulatory powers over

1 their members akin to that of the governmental agencies
2 themselves. So I attempted to do two things:

3 1. To pattern the provisions in House Bill 73,
4 which is Exhibit 4, where possible after the language which
5 was tried, proved and tested in the federal statute creating
6 the F.D.I.C. With respect to setting up the corporation
7 that would do this, a non-profit corporation, I attempted
8 to pattern it after what I knew to be the system of opera-
9 tion under the Federal Maloney Act, which would be to
10 devise a private non-profit corporation which would sub-
11 stantially be the only corporation of its type in existence
12 to be incorporated under state law, but the members, in
13 order to become members, would have to acquiesce to the
14 regulatory features of the bill.

15 In addition, I tried to make the requirements
16 for licensing sufficiently strict that in order for a
17 corporation to be licensed it would have to have the
18 acceptance of approval of virtually the entire banking
19 industry in the state. This was done by providing that
20 the corporation would have to be financially strong
21 enough, if you read through the various provisions of the
22 bill, to accept any bank in the state as a member bank.

23 At that time the thought comes to mind—you
24 have pointed out through Mrs. Hallman's testimony—that
25 an amendment was put on the bill with respect to private

1 banks. I specifically excluded private banks from my
2 initial draft of the bill because I knew that they were
3 unincorporated and, therefore, not eligible for insurance
4 under the F.D.I.C., so, if they weren't eligible for the
5 primary coverage, they certainly wouldn't be eligible for
6 the excess coverage.

7 Basically speaking, those were my thoughts. I
8 then decided that the Non-profit Corporation Act would
9 probably have to have an authorizing amendment, which is
10 Exhibit 3, so that such a corporation could clearly be
11 formed under that law.

12 Basically speaking, that was my thought process
13 as I drafted the bill.

14 Q As you drafted the bill, and in the course of
15 your research, did you research the laws of other states
16 to determine if such a system had been set up in any other
17 state? And if so, had it been workable in the other
18 jurisdictions?

19 A I had heard that the State of Massachusetts had
20 had, or did have, a similar corporation or similar setup.
21 I went to the library and looked up their law and found it
22 to be so different and so incompatible with our constitution
23 so as not to pursue the matter any further.

24 MR. HAYNES: Mr. Chairman, I would like to ask a
25 question at this time.

1 CHAIRMAN MURRAY: Mr. Haynes has a question he
2 would like to ask you.

3 THE WITNESS: Yes, sir.

4
5 EXAMINATION

6 BY MR. HAYNES

7 Q Mr. Palmer, you have referred on two or three
8 occasions to the question of constitutionality of drafting
9 of bills that would in effect pledge the credit of the
10 state behind this type of operation. Did it occur to you
11 to possibly approach the Legislature in your draft with
12 a Constitutional Amendment?

13 A I'm sure that thought may have crossed my mind
14 at some point, Mr. Haynes, but my initial undertaking was
15 to simply draft a statute, and so that's the approach I
16 took.

17 MR. HAYNES: Thank you, sir.

18 CHAIRMAN MURRAY: Go ahead.

19
20 EXAMINATION

21 BY MR. McSHANE

22 Q Getting back to where we were as far as your
23 research is concerned, Mr. Palmer, is Massachusetts the
24 only state that you looked into in this regard?

25 A No, sir.

1 Q What other states did you research?

2 A I combed back through the Texas laws to see if
3 we had ever had such a thing here.

4 Q Did you find that we had such a thing at one
5 time?

6 A Yes, sir. Back in, oh, I would say the late
7 1920's, early 1930's, somewhere in there, I believe, I
8 ran across a statute which in my view was unconstitutional
9 because it set up a political subdivision of the state
10 to achieve this purpose. I found no further evidence
11 in the library of what may or may not have happened to this
12 corporation.

13 Q You're not advised as to what eventually happened
14 to this initial system of deposit insurance?

15 A No, sir. I'm sure it must have gone out of
16 business because we haven't heard of it recently.

17 Q All right, now, sir, you described for us your
18 initial thoughts on these two bills and the reasoning that
19 went into the two bills. Now I assume that you incorporated
20 these initial thoughts into a first draft of the bill?

21 A That is correct.

22 Q All right, sir. Now, basically, what point in
23 time were you working at now? When were you working on
24 this?

25 A I have a hard time pinning that down specifically

1 in my own mind at this time. It would have been after the
2 regular session of the Legislature had ended, and probably

3 Q Which regular session would we be talking about?

4 A In 1969, which I believe was the Sixty-first,
5 if I'm not mistaken.

6 Q Yes. That's correct.

7 A It would have been sometime after the end of
8 the regular session of the Sixty-first Legislature, and
9 either prior to the first called session or, perhaps,
10 during the first few days of the first called session.

11 Q Now, you recall that in Mrs. Hallman's testimony
12 she also made a part of the record of this Committee which
13 are actually Exhibits Numbers 1 and 2, House Bills 52 and
14 53 which dealt with basically the same thing.

15 A Yes, sir.

16 Q Did you draft House Bills 52 and 53?

17 A The basic bills. Yes, sir.

18 Q So the time that you were working on these bills,
19 the bills would have had to be completed by the beginning
20 or the first few days of that first called session. Is
21 that a fair statement?

22 A Yes, sir. Certainly it was completed before
23 the bills were introduced.

24 Q But you had done no work on these bills during
25 the regular session, the Sixty-first session of the Texas

1 Legislature?

2 A No, sir.

3 Q Had you been approached by Mr. Osorio or anyone
4 else during this time, during the regular session?

5 A No, sir. The first that I ever even heard of the
6 subject matter was when Mr. Osorio asked me to draft this
7 bill in, let's say, June or July of 1969.

8 Q Mr. Palmer, after you completed your first draft
9 of the bill incorporating the ideas that you outlined, to
10 whom did you submit that draft?

11 A I submitted a copy of it to Mr. John Osorio and
12 to Mr. Frank Sharp. And I, of course, delivered the draft
13 itself to Representative Tommy Shannon.

14 Q Now, we're talking about your first draft of
15 this legislation. Or let me ask you this: was there more
16 than one draft?

17 A I may have had some working notes or what a
18 lawyer would call a "paste pot" version, but this was
19 incorporated into what I call the first draft, and
20 basically speaking, that didn't vary from the time it was
21 written until it was passed in the second called session.

22 Q So, you were never instructed to make any changes
23 in that draft as you submitted it?

24 A Yes. I was instructed to make a change before
25 the bills were reintroduced in the second called session.

1 Q Who instructed you to make that change?

2 A To the best of my recollection, I believe, it was
3 Mr. Osorio.

4 Q And what was the substance of that change?

5 A It changed the regulatory authority from the
6 Finance Commission of Texas and the Banking Commissioner
7 of Texas to the State Banking Board. That was the only
8 change there was.

9 Q All right. To sum up, you made no changes in the
10 bill from the time you first submitted it to Mr. Osorio,
11 Mr. Sharp and Mr. Shannon, and it was then introduced in
12 the first called session. And after the first called
13 session you made one change, the change you just described,
14 and that was the only change that was made in the bill?

15 A Well, sir, no. I have to answer your question
16 this way. There was another change made in the bill in
17 the first called session. I have racked my memory to
18 determine whether or not I had anything to do with it, and
19 I just can't remember. But the bill as originally drafted
20 and delivered to Representative Shannon, if I am not
21 mistaken—we would have to go back to the record on this—
22 had all of the regulatory authority vested in the Banking
23 Commissioner.

24 Sometime between that part of delivery and the
25 point of introduction, there was a division of authority

1 in the sense that the Finance Commission was made the
2 rate-setting and license-granting and rule-making
3 authority, and the Banking Commissioner was made the day-
4 to-day operating and regulatory authority. I just don't
5 recollect whether I had anything to do with that change
6 or not.

7 Q Now the change shifting—the change that Mr.
8 Osorio dictated that you incorporated into the bill, the
9 one that you described changing the regulatory authority,
10 did he give you the reason for requesting that change?

11 A I don't know that he mentioned any reason. It's
12 been a long time ago and the only thing that comes to my
13 mind would be the feasibility of changing from a one-man
14 regulatory setup to a three-man regulatory setup. But
15 I'm just not really sure. My function was to draft the bill
16 and try to draft it in accordance with their wishes.

17 Q During the time that you were drafting these
18 bills, did you have occasion to discuss the bills with
19 Mr. Frank Sharp?

20 A Yes, sir.

21 Q What was the substance of your conversations
22 with Mr. Frank Sharp concerning the bill?

23 A Oh, it was very sketchy. I told him what had
24 been outlined to me by Mr. Osorio as the purpose of the
25 bills, the constitutional difficulties I was running into,

1 and then when I hit upon the final format, I called him and
2 told him, as I recall, what the final format would be. And
3 they were all very brief discussions.

4 Q Now, in addition to Mr. Osorio and Mr. Sharp and
5 Mr. Shannon with whom you stated you discussed the bills,
6 did you discuss the bills with anyone else?

7 A Only in the sense—are you talking about the
8 drafting stage now?

9 Q Yes, sir.

10 A —that I may have kicked it around the office
11 with some other lawyer after 5:00 o'clock, and I'm sure
12 that I enlisted some assistance from the librarians in the
13 State Library as I was working on it.

14 Q But there was no one else that was actually in
15 a position to advise or direct you on what would go into
16 the bills?

17 A No. The makeup of the bills is really the
18 product of my own mind.

19 Q Thank you, sir.

20 Now, in drafting these bills, let me ask you,
21 was it your purpose to provide for deposit insurance in
22 lieu of that provided by F.D.I.C., or in addition to that
23 provided by F.D.I.C.?

24 A It was my intention to provide insurance in
25 addition to, in the nature of an excess coverage which

1 would not be applicable to the amount insured by the F.D.I.C.

2 Q Was it your intention to structure the bills in
3 such a way that a state bank would be permitted to
4 withdraw from the F.D.I.C.?

5 A No, sir. Frankly, the thought never even
6 occurred to me. I knew then and now that a state bank can
7 withdraw from the F.D.I.C. any time it wants to. But from
8 the standpoint of public relations and protection of
9 depositors and the fact that the F.D.I.C. is well
10 established as a stable element in the economy, the
11 thought just didn't even cross my mind.

12 Q Isn't it a fact, sir, that from a practical
13 standpoint, state banks are compelled to belong to the
14 F.D.I.C. because there is really no alternative, or there
15 was no alternative without these bills?

16 A Well, I'm not all that familiar with the business
17 of banking. I would say from that I have observed, most
18 banks do belong to the F.D.I.C., and proudly advertise the
19 fact.

20 Q Well, prior to your work on these bills, were
21 you aware of any other type of agency or deposit insurance
22 that would have been available to a state bank had they
23 wanted to withdraw from the F.D.I.C.?

24 A No, sir.

25 Q And your bills, the bills that you drafted, would

1 have provided such an agency or corporation for that pur-
2 pose. Is that correct?

3 A No, sir, that is not correct.

4 Q In other words—well, go ahead and explain why
5 that isn't.

6 A Because, if—I know that this supposition has
7 been made, but if one were to read the entire bill from
8 start to finish, I don't think that you can come to that
9 conclusion. I'll bore the Committee with reading an
10 excerpt from a case which expresses the law on interpret-
11 ing bills. This is a well-known Texas Supreme Court case
12 and I'll provide you a copy of all these cases afterward,
13 sir, so that you may independently verify them.

14 But the quotation is:

15 "It is well settled as a rule of statutory
16 construction in this state that it is proper to
17 look to all parts of a legislative act to ascertain
18 its proper construction and meaning. That is, to
19 ascertain the legislative intent. It is the
20 legislative intent that is the law. In applying
21 this rule, courts will not look alone to one
22 phrase, clause or sentence of an act, but to the
23 entire act, and this includes the caption, the
24 body of the act, and the emergency clause."

25 In construing this bill, I have previously

1 referred to the fact that, basically speaking, there would
2 have to be one corporation. With the rate structure being
3 what it is and with the fact that there was no funding
4 in the bill and considerable leeway was allowed for rule-
5 making power, I also thought that they would clearly set
6 down specific rules regarding the nature of the coverage.

7 Now, contrary to the rule of law that I have
8 just read to you, I believe some people have taken one
9 aspect of this bill and lifted it out of context and
10 come up with the suggestion that that makes the bill do
11 what you say.

12 Q What aspect is that, sir?

13 A That is in the definition of "deposit."

14 Q That would be subsection "D" of Section II, I
15 believe?

16 A Yes. Subsection "D" in the definition of
17 "Insured Deposit." And what I attempted to do through
18 that subsection is, once again I was following the language
19 of the federal law up until the time I got to the proviso,
20 saying that "but such term shall not mean and there shall
21 be no insurance of deposit to the extent that same are
22 insured by the Federal Deposit Insurance Corporation."

23 And my purpose there was simply to exclude that
24 coverage, because this was to be strictly an excess type of
25 bill. Further, if you will go to the emergency clause of

1 the bill, which is Section XIII, you will see that the
2 emergency clause speaks in terms of insurance in excess of
3 the \$15,000.00 deposits. And all of these factors com-
4 bined, coupled with the general thought that no one even
5 suggested, or the thought never crossed my mind that anybody
6 would want out from under the F.D.I.C. In my opinion,
7 then and now, these bills are supplementary and not in
8 lieu of F.D.I.C. coverage.

9 Q As a lawyer who has had extensive legislative
10 experience, you have probably dealt with the cases involv-
11 ing the construction of legislation fairly extensively
12 also, have you not?

13 A Some of them. Yes, sir.

14 Q Based on all of that experience then, it is your
15 testimony that you are still of the opinion that this pro-
16 vides insurance in addition to, and does not permit
17 insurance in lieu of?

18 A That is correct, sir, and I believe this list
19 of authorities I submit to you will supplement that
20 position.

21 MR. NUGENT: While we're talking on this, Mr.
22 Chairman, could I look at that list of authorities?

23 CHAIRMAN MURRAY: Do you have a copy of that list
24 of authorities you were speaking of?

25 THE WITNESS: Yes, sir, Mr. Chairman.

1 CHAIRMAN MURRAY: I mean if you have an extra
2 copy of it other than what you need yourself, could we
3 have one copy?

4 (The list referred to was
5 marked "Exhibit 12" for
6 identification.)

7 Q Based on this list of authorities and based on
8 your knowledge of this bill, is it your opinion that had
9 the bills not been vetoed and had they become law, and
10 were they being construed by an Appellate Court that the
11 results of such decision would be in accord with your
12 opinion on the bills?

13 A That is correct, sir. That is my opinion.

14 Q Now, I'm briefly looking over this list of
15 authorities and it appears to me that the cases that you
16 have cited us here appear to deal with general principles
17 of legislative construction.

18 A Yes, sir. They deal primarily with the so-called
19 "four corners rule," that you have to look at an entire
20 bill and not just one part of it.

21 Q To ascertain the legislative intent?

22 A Yes, sir. Since—I might add here that, as I
23 am sure the Committee knows, but perhaps it would be well
24 to inject it in the record, that on Congressional bills in
25 the United States Congress, there are many independent ways
of arriving at the legislative intent, such as formal

1 written committee reports, remarks in the Congressional
2 Record, and so forth. As you all are aware, there are no
3 such items generally available in the Texas Legislative
4 process, and therefore, it has become a rather common
5 process of draftsmanship to attempt to expound upon, or
6 express the legislative intent, either in the preamble or
7 in the caption or in the emergency clause to put the icing
8 on the cake, so to speak, as to what's in the body of the
9 act itself.

10 Q In addition to these principles of legislative
11 construction cited in these cases, and in addition to
12 their enunciation of the "four-corners rule," I am assuming
13 that you do not have a case dealing directly with this type
14 of situation. In other words, you do not have a case in
15 point?

16 A I don't follow you, sir.

17 Q Do you have a case that speaks to the question
18 of a banking legislation of this type? In other words,
19 was there ever any litigation or cases resulting from the
20 old statute that we had in Texas back in the 1920's, the
21 one that you described to us?

22 A No, sir. I could find none. In my view, I was
23 plowing new ground here.

24 Q Now, is it correct, sir, that there is no place
25 in the bills where it specifically states that a bank could

1 not simply withdraw from the F.D.I.C. and insure from
2 \$1.00 up to \$100,000.00 rather than from its \$20,000.00
3 limit up to \$100,000.00?

4 A To achieve that result, sir, I'd reiterate, I
5 think you would have to take that definition of "insured
6 deposit" and lift it out of the context of the whole bill.

7 Q Is it your contention that the definition of
8 "insured deposit" achieves the results of banks not being
9 permitted to withdraw from F.D.I.C.?

10 A I sure thought it did at the time, sir. Obviously
11 since, in hindsight, it has been subjected to so much
12 criticism, maybe I could have done a little bit better job.

13 Q Are you aware of the fact that various depart-
14 ments, the Banking Commission and other associations such
15 as the Texas Bankers Association, have interpreted the
16 bill to allow banks, or to possibly allow banks to withdraw
17 from the F.D.I.C.?

18 A The only thing I have seen in that connection
19 was a copy of a letter from the late Mr. Falkner to
20 Governor Smith, urging him to veto the bill. In the letter
21 he didn't mention that. In the copy I saw, as a matter of
22 fact, he said he agreed with the principle of the legisla-
23 tion, namely to provide insurance above and beyond that
24 provided by the F.D.I.C. His views seemed to be that the
25 measure went through too quickly and was of such significance

1 that it would require more deliberation and more study by
2 people actually affected by the industry itself before it
3 should be put into law.

4 I also saw a copy of a letter from Mr. Deryll
5 Henry, I believe his name is, of the Texas Bankers
6 Association, in which he pointed out numerous items in
7 the bills that he didn't like. It is the type of letter
8 that if I were trying to persuade somebody against the
9 bill, I would pick out and pick at everything I could find
10 in it, and I think that is what that letter does.

11 And as a matter of fact, when I read the copy
12 of that letter was the first time the notion ever even
13 struck me that anybody would think that such an interpreta-
14 tion could be applied to this bill.

15 Q And it's your testimony that the letter you saw
16 from Mr. Falkner, as you recall, did not reflect the view
17 that it would permit state banks to withdraw from the
18 F.D.I.C.? In other words, that was not the basis of his
19 objection?

20 A That is true, sir, but I am going back two years
21 in my memory now and it's my recollection that his letter
22 was as I have testified and that the Texas Bankers
23 Association was contrary. They said that it would cause,
24 perhaps, a proliferation of small corporations, and that
25 the bill needed more study, and that it also might enable

1 somebody to just get out from under the coverage of the
2 F.D.I.C., and be insured solely through this vehicle.

3 MR. HALE: Mr. Chairman, could I ask a question
4 here?

5 CHAIRMAN MURRAY: All right, sir. Mr. Hale.

7 EXAMINATION

8 BY MR. HALE

9 Q Mr. Palmer, I shared—when I first read this bill,
10 I shared the same opinion that you do, that it did not
11 allow a state bank to come out from under the F.D.I.C.,
12 and again by hindsight, going back now and studying it
13 more thoroughly, which I have done in the last few weeks,
14 I want to ask you if you don't agree that as you read that
15 subsection "B" actually the bill would permit a state
16 bank to come out from under F.D.I.C. and still guarantee
17 their deposits? It says:

18 "Such terms shall not mean and there shall
19 be no insurance of deposits to the extent that
20 same are insured by the Federal Deposit Insurance
21 Corporation."

22 Now, if the state bank had F.D.I.C. insurance,
23 then the state insurance scheme would be excess insurance.
24 But if you had a state bank that did not have F.D.I.C.
25 then that clause is meaningless. They could insure their

1 deposits from zero to one hundred thousand, could they
2 not?

3 A Except to this extent, Mr. Hale. Once again I
4 go back to the principles of statutory construction which
5 you, of course, are quite familiar with. It's been pointed
6 out that this section is perhaps ambiguous; it doesn't say
7 exactly what you say and it doesn't say the opposite of
8 it. In resolving any ambiguity, one of the things you
9 do is look to the emergency clause. Once again in the
10 emergency clause is where you find the reference to excess
11 insurance. I would add to that that had this entity
12 come into being, or had the bill come into being, it's
13 inconceivable to me that the State Banking Board would
14 have passed rules providing for anything other than excess
15 insurance. That would be another aspect of it.

16 MR. HALE: Okay. Thank you.

17
18 EXAMINATION

19 BY MR. McSHANE

20 Q Mr. Palmer, we have been talking primarily about
21 the drafting process of these bills and also the intent of
22 the bills and your interpretation of the bills.

23 A Yes, sir.

24 Q Now, let's move to the legislative process of the
25 bills. You stated that you carried the bill to Mr. Tommy

1 Shannon, Representative Tommy Shannon. Is that correct?

2 A That is correct.

3 Q And when did you do this?

4 A I believe it was sometime in late July of 1969.
5 I had one or two meetings with Mr. Shannon. As I recall
6 once when I went to see him, he wasn't there and I had to
7 come back.

8 Q Are you saying one or two meetings at the time
9 you were attempting to deliver the bills to him?

10 A Yes, sir.

11 Q All right, sir.

12 MR. HALE: Mr. Chairman, could I interrupt there
13 for a question or two?

14 CHAIRMAN MURRAY: All right. Mr. Hale.

15
16 EXAMINATION

17 BY MR. HALE

18 Q When we're talking about carrying a bill, Mr.
19 Palmer, was your draft of this bill the original House
20 Bills 52 and 53 that were introduced in the first called
21 session?

22 A Yes. With the possible exception of this, the
23 splitting of authority between the Banking Commissioner
24 and the Finance Commission in that bill, which, Mr. Hale,
25 I just don't remember how that came about.

1 Q I understand. Now, Mrs. Hallman testified a
2 minute ago, and I think she was just in error on detail,
3 that House Bills 52 and 53 were identical to House Bills
4 72 and 73. That's incorrect isn't it? Weren't there
5 differences?

6 A Yes, sir. The difference being, and the sole
7 difference being, insofar as the bills as introduced, the
8 changing of the regulatory authority to the State Banking
9 Board.

10 Q But when you say you took the bill to Tommy
11 Shannon, you're talking about House Bills 52 and 53?

12 A Yes, sir.

13 Q Thank you.

14 CHAIRMAN MURRAY: Go ahead.

15
16 EXAMINATION

17 BY MR. McSHANE

18 Q All right, sir. Now, before you physically
19 delivered House Bills 52 and 53 to Mr. Tommy Shannon, had
20 you had any conversations with Mr. Shannon about these
21 bills?

22 A It's possible that I may have had either a phone
23 call or one previous conversation, but it would have been
24 limited to that.

25 Q You were delivering these bills to Mr. Shannon

1 with a view that he would sponsor the bills. Is that
2 correct?

3 A Yes, sir. I was told by Mr. Osorio that Mr.
4 Shannon had expressed a desire to be the sponsor, or was
5 going to be the sponsor, and that that's where the drafts
6 should be delivered.

7 Q Did Mr. Osorio mention who told him that Mr.
8 Shannon would be the sponsor?

9 A Not that I recall.

10 Q Is it your testimony that you actually took no
11 part in the selection of the sponsor?

12 A That is true.

13 Q You were simply told that Mr. Shannon would be
14 the sponsor and to deliver the bills to Mr. Shannon?

15 A That is correct.

16 Q All right, sir. At the time when you delivered
17 the bills to Mr. Shannon, did you discuss the bills with
18 him?

19 A Yes, sir. I gave him a general outline of what
20 I thought the bills did, which is substantially the same
21 as what I have testified to here this morning.

22 Q So you briefed him on the content of the bills?

23 A That is correct.

24 Q At this time, did you have any contact with any
25 other members of the House concerning these bills?

1 A No, sir. Not to my recollection.

2 Q Did you have any contact with any members of the
3 Senate concerning these bills?

4 A Not until sometime later.

5 Q When was your first contact with a member of the
6 Senate?

7 A I'm not sure of the exact date, sir. It was,
8 I presume, the first day that the bills were in the Senate
9 after they had been passed by the House in the second
10 called session.

11 Q All right. Now, let's back up for a minute. We
12 started out with your carrying House Bills 52 and 53 to
13 Mr. Shannon.

14 A Yes, sir.

15 Q And we go from that point through the first
16 called session without your having had any further contact
17 with a member of the Legislature. Is that a fair state-
18 ment?

19 A Concerning these bills, yes, sir.

20 Q Then we come to the second called session of the
21 Sixty-first Legislature. Would you state with whom you
22 had contact at that time?

23 A In the second called session?

24 Q Yes, sir.

25 A In the Senate?

1 Q Yes, sir.

2 A Well, on the day in question I received a call
3 from Mr. Osorio explaining that a certain conflict had
4 arisen in the Senate whereby, I believe he said, the bills
5 had been tagged and in order to get the tag removed it
6 was going to be necessary to change sponsors, and that
7 he asked if I would make myself available for the
8 Committee hearing, or whatever, on behalf of the new
9 sponsor, to explain what was in the bill, or to give an
10 outline of what was in the bill.

11 Q All right. Let's back up just a minute, Mr.
12 Palmer. Who was the original sponsor of the bills in the
13 Senate?

14 A I have no direct knowledge of this but it's my
15 understanding that it was Senator Jack Strong.

16 Q And which senator did Mr. Osorio say had placed
17 a tag on the bills?

18 A I don't really remember that of my own independent
19 recollection, sir. After all I've seen and heard and so
20 forth since then, I believe it was Senator Patman.

21 Q And it's your testimony that you were asked to
22 be available to explain the bills to the new sponsor?

23 A That is correct.

24 Q Did you take any part in the selection of the
25 new sponsor?

1 A None.

2 Q Do you recall who the new sponsor was?

3 A Yes, sir. Senator Charles Wilson.

4 Q Did you comply with Mr. Osorio's request and
5 explain those bills to Senator Wilson?

6 A Yes. What happened was, I went to the Senate
7 Reception Room where, at that time the Senate was in
8 session and there were, as you know, a number of people
9 milling about. Either I sent word in, or Mr. Osorio sent
10 word in to Senator Wilson that I was there and available,
11 and Senator Wilson, within the course of a few minutes,
12 came out off the floor and asked me to go to his office
13 and dictate to his secretary an outline of these bills.

14 Q All right, sir.

15 Mr. Chairman, we'll have to take a brief recess
16 for changing the tapes.

17 CHAIRMAN MURRAY: All right. We'll stand at
18 ease for a few minutes.

19 (Brief recess.)

20 CHAIRMAN MURRAY: The Committee will come to
21 order.

22 Mr. McShane, will you continue with your question-
23 ing?

24 MR. McSHANE: Yes, sir, Mr. Chairman.

25 Q Mr. Palmer, I believe that you stated, in answer

1 to my last question, that you did comply with Mr. Osorio's
2 request and did dictate a brief outline of the bills for
3 the benefit of Senator Wilson. Is that correct?

4 A Yes, sir. It was my impression that they were
5 going to have a committee meeting, or something that day,
6 and that Senator Wilson would have been on the committee
7 and, perhaps, he wanted the outline for himself or he
8 wanted me to appear. In any event, I did go dictate such
9 an outline to Senator Wilson's secretary.

10 Q Did you talk with Senator Wilson, or did you
11 just deliver the outline to him?

12 A I spoke to him briefly before I went up to his
13 office, and then his secretary took the outline to him
14 down on the floor, and I don't recall speaking to him
15 again.

16 Q All right, sir. Now, after this, did you have
17 any further contact with any member of the Senate concern-
18 ing these bills?

19 A Not to my knowledge, sir. I just waited around
20 Senator Wilson's office for a while and then I think I
21 may have gone back down around the rotunda and milled around
22 there a bit and left.

23 Q All right, sir. After this time, did you have
24 any further contact with any member of the House concerning
25 these bills?

1 A No, sir.

2 Q Well, your dictation of the outline, or memoran-
3 dum, for the benefit of Senator Wilson, was this actually
4 your last act or last service rendered concerning these
5 bills?

6 A Yes, I would say so.

7 Q At each time when you explained these bills to
8 the respective sponsor, when you explained 52 and 53 to
9 Mr. Shannon, and when you dictated the outline to Senator
10 Wilson, did you state that the intention of these bills
11 was to provide insurance in addition to F.D.I.C. rather
12 than in lieu of F.D.I.C.?

13 A That is correct. Just substantially as I have
14 previously testified.

15 Q Could you briefly describe the role of your
16 former associate, Mr. John Osorio, in the passage of these
17 bills, in addition to the material you have already given
18 us?

19 A Well, sir, I'm not too familiar with what he
20 did. For example, I don't know exactly who all he talked
21 to or what the conversations were. The only time I was
22 ever around him when he was talking to any members of the
23 Legislature was that day in the Senate Reception Room when
24 he was there and obviously discussing the bill with
25 several Senators.

1 Q Do you recall who he was discussing the bill with?

2 A No. It is hard for me to say at this time, sir,
3 because in the general confusion there were so many
4 Senators in and out of there I just couldn't pin it down.

5 Q Sir, could you briefly describe the activities
6 of your other former partner, Mr. Waggoner Carr in the
7 passage of these bills?

8 A Once again, the only thing that I really know of
9 my own knowledge is that I saw him up there on that same
10 day in the Senate Reception Room.

11 Q Was this at the same time that Mr. Osorio was
12 talking to several senators?

13 A Yes, sir.

14 Q They were there working together. Is this
15 your—

16 A Well, I don't know that they were working
17 together in the sense of a team or something, but both of
18 them were there working. Yes, sir.

19 Q But it is your personal knowledge that Mr. Carr
20 was also assisting in lobbying this bill in the Senate.
21 Is that a fair statement?

22 A That was my understanding.

23 Q Mr. Palmer, thus far we have limited our discussion
24 to members of the House and the Senate. Did you have any
25 contact with any other public official in relation to these

1 bills?

2 A Yes, sir. I talked at one time to Senator
3 Gallaway Calhoun.

4 Q And who is Senator Gallaway Calhoun? What
5 position did he occupy at this point?

6 A At that time he was a legal advisor on the staff
7 of the Governor.

8 Q And what was the substance of this conversation?

9 A I believe that this occurred after the bill was
10 passed. I'm not sure, but the substance of it was that I
11 identified myself to him as the drafter of the bills and
12 more or less asked him if he wanted any source material
13 or anything of that nature that would be helpful to him
14 in analyzing them. And as I recall, his general response
15 was that he thought his own function of analysis was work-
16 ing all right and he didn't need any help. And that was
17 about it.

18 Q Who directed you to contact Senator Gallaway
19 Calhoun?

20 A I believe Mr. Osorio asked me to speak to him,
21 but I can't be sure of that. I may have—I was in and out
22 of the senator's office on other matters, and I may have
23 brought it up myself. But it could very well be that Mr.
24 Osorio asked me to volunteer this information to him.

25 Q Did you ever have any occasion to speak directly

1 to Governor Smith in regard to these bills?

2 A No, sir.

3 Q And you only spoke with Mr. Calhoun on this one
4 occasion. Is that correct?

5 A Once or, as I say, it could have been more than
6 once because I was, at that time, as you know, a lawyer is
7 engaged in many different things, and I was working on the
8 tax bill and I could have been in and out of his office on
9 that and mentioned it, but I don't have any specific
10 recollection of it.

11 Q At the time you spoke with Mr. Calhoun, did he
12 give you any indication that Governor Smith was consider-
13 ing vetoing the bills?

14 A I would say that he was noncommittal and didn't
15 give me any indication one way or another of either his
16 attitude or the Governor's.

17 Q When did you first hear that Governor Smith was
18 considering vetoing the bills? Or did you ever hear about
19 it?

20 A Yes. I heard it a day or two before the veto
21 actually occurred.

22 Q Did you do anything or contact anyone in an
23 attempt to stop the veto or persuade Governor Smith not
24 to veto the bills?

25 A No.

1 Q Now, did you have any contact with any other
2 public official concerning the bills?

3 A Well, at one time I had a brief conversation—
4 I guess, if you can define Dr. Elmer Baum as a public
5 official—I had a contact with him. I don't know whether
6 he was a public official at that time or not.

7 Q What was the substance of your conversation with
8 Dr. Baum?

9 A I knew that he was either on the State Banking
10 Board or was going on the Board. I have been a friend
11 and have known Dr. Baum socially for many years. I
12 thought it would be, as a matter of protocol, it would be
13 proper for me to advise him of the pendency of these
14 measures and the fact that they would affect the State
15 Banking Board.

16 Q Now, was this when the bills were already
17 introduced, or was this prior to their introduction?

18 A I feel sure it must have been after they were
19 already introduced. The only way I can pin it down in
20 point of time would be that the only reason I would have
21 had to talk to Dr. Baum would be by virtue of knowing that
22 he was either on the Banking Board or the appointment was
23 rumored to be imminent.

24 Q Do you have any personal knowledge as to why
25 Governor Smith opened the call of the session to these two

1 specific banking bills?

2 A No, sir.

3 Q Did you have any conversation with Dr. Baum in
4 this regard?

5 A I don't think so. I don't recall it.

6 Q Did you have any conversation with Mr. Calhoun
7 in this regard?

8 A I don't believe so, sir. I believe my conversa-
9 tion with him was after the facts, rather than before.

10 Q All right, sir. Did you have contact with any
11 other public official or, I guess we could call quasi-
12 public official such as Dr. Baum. Did you have contact
13 with anyone else like that?

14 A At what point in time, sir.

15 Q Let's say this. At any point during the time
16 frame we have discussed in reference to these bills.

17 A Yes. I contacted one other public official to
18 ask his view on the matter, and any assistance he might be
19 able to give me.

20 Q And which public official was this?

21 A This was the State Treasurer.

22 Q And could you state for the record the name of
23 the State Treasurer?

24 A Jesse James.

25 Q Now, as best you can, would you pinpoint the

1 time at which you contacted Mr. James?

2 A I really don't know. I think it would have
3 been right before the bills were originally introduced in
4 the first session, or perhaps after that, during the first
5 session.

6 Q And what was the substance of your conversation
7 with Mr. James?

8 A Mr. James—I told him what I was engaged in and
9 asked him if he knew of anything that would be of any help
10 in his experience as a state regulator over the years. The
11 only thing he mentioned was, as I recall, that the bill
12 should be a tight regulatory bill, and I believe he men-
13 tioned to me the fact that there had been a similar cor-
14 poration in Texas years ago.

15 Q This was the only information that you were
16 given by Mr. James. Is that correct?

17 A Yes. It was a very short conversation.

18 Q All right, Mr. Palmer. Did you have contact
19 during this time frame with any other public official?

20 A Concerning these bills?

21 Q Concerning these bills. Yes, sir.

22 A Not to my recollection. No, sir.

23 Q Mr. Palmer, do you have knowledge of any bribe
24 or any other thing of value being given to any public
25 official in consideration for favorable action on these

1 bills?

2 A No, sir.

3 Q Do you know of any attempt to bribe or gain the
4 confidence or favors of a public official by monetary
5 gifts in furtherance of the passage of these bills?

6 A No, sir.

7 MR. McSHANE: Mr. Chairman, I have no further
8 questions of this witness.

9 CHAIRMAN MURRAY: Any members of the Committee
10 have questions?

11 MR. HALE: I've got a question.

12 CHAIRMAN MURRAY: Mr. Hale.

13
14 EXAMINATION

15 BY MR. HALE

16 Q Mr. Palmer, would it be a fair statement to say
17 that you were sort of the journeyman technician on these
18 bills, rather than the mastermind behind them?

19 A Well, I don't know that I would use the word,
20 "mastermind," but I think that is a fair statement. Yes,
21 sir.

22 Q You did not conceive the idea of these bills is
23 what I'm getting at.

24 A No, sir.

25 Q The idea came to you from John Osorio?

1 A That is correct.

2 Q Did you ever talk to Mr. Sharp about it, Frank
3 Sharp?

4 A Yes. As I said, I had several telephone conver-
5 sations with him during this period of time.

6 Q Was it Mr. Sharp's impression that you were going
7 to exclude the F.D.I.C. by this bill?

8 A Yes, sir.

9 Q His objectives and what he wanted was a bill
10 that would permit state banks to get insurance from zero
11 to a hundred thousand without having to be in F.D.I.C.
12 Is that correct?

13 A No, sir. That was not his explanation. The
14 explanation of both Mr. Sharp and Mr. Osorio was that,
15 in this time of tight money, which you have to refer back
16 to in 1969, that it was difficult for medium and smaller
17 sized banks to attract deposits from large institutional
18 depositors such as pension funds, or insurance companies,
19 or depositors of that type, unless they either collateralized
20 the deposit above and beyond the \$15,000.00, or unless,
21 perhaps, there could be some type of excess insurance
22 above and beyond this. The measure was explained to me as
23 a move to benefit the medium and smaller sized banks in
24 Texas by providing them with this means of attracting
25 deposits.

1 Q And it was your impression that that was Mr.
2 Frank Sharp's thinking too?

3 A Yes, sir.

4 Q You were under the impression that he did not
5 want to get out from under F.D.I.C. regulation in his
6 bank?

7 A I don't believe the question ever even came up
8 in any conversation.

9 Q Never discussed it with you?

10 A (No response.)

11 Q All right. Did you ever have any direct contact
12 with Gus Mutscher, Speaker Gus Mutscher, on these bills?

13 A No, sir.

14 Q Did you ever have any direct contact, other than
15 that you have already explained, with Mr. Tommy Shannon?

16 A No, sir.

17 Q Did you have any direct contact with Representa-
18 tive Bill Heatley?

19 A No, sir. Not that I recall.

20 Q Did you ever talk to Lieutenant Governor Ben
21 Barnes about these bills?

22 A Not at that time. Only way after the fact,
23 during the recent session of the Legislature.

24 Q Recent? You mean the 1971 Session?

25 A Yes, sir.

1 Q You never did talk to him at any time while the
2 bills were pending in the Senate?

3 A That is correct.

4 Q Did you do anything or contact any member of
5 the House or Senate or anyone in any official capacity in
6 the House or Senate with the idea of trying to expedite or
7 push these bills through?

8 A No, sir.

9 Q Do you know whether Mr. Osorio did or not?

10 A Not of my own personal knowledge.

11 Q Did Mr. Osorio—and I use the phrase not critically
12 at all—was Mr. Osorio also lobbying on these bills at the
13 same time you were?

14 A Well, that was my understanding, and it was also
15 my understanding that I was not lobbying the bills.

16 Q Again, it gets back, you were the technician on
17 the bills, rather than the coach or the manager of this
18 operation.

19 A The drafter. Yes, sir.

20 Q Is that correct.

21 Did you have any contact with anybody represent-
22 ing National Bankers Life Insurance Company during any of
23 this period of time while these bills were pending?

24 A Well, I had contact with people at National
25 Bankers Life. Yes. But not about these bills.

1 Q Were you aware at the time that there were some
2 purchases and sales of stock in National Bankers Life going
3 on with some of the people involved in this legislation?

4 A No, sir. I did not become aware of that until
5 much later in point of time.

6 Q Was there ever anything in any of your experience
7 on this bill indicating causal connection between those
8 stock transactions and between the introduction and passage
9 of these two bills?

10 A No, sir. As I say, even when I first learned
11 that there had been some stock transactions by these
12 people, even at that time there was no intimation that
13 there was any connection between the stock transactions
14 and anything.

15 Q Do you believe that there was any connection
16 between the stock transactions and the passage of these
17 bills?

18 A Personally, no, sir.

19 Q Did you talk to anyone during the course of
20 working on these bills that raised any violent objection to
21 the bills, to their substantive content?

22 A No. Everybody seemed to think it was a pretty
23 good idea.

24 Q Did you ever talk to Mr. Falkner about the bills?

25 A No, sir.

1 Q Do you know of any opposition to the bills? Or
2 did you know of any at the time?

3 A No, sir. The first I ever heard of there being
4 any opposition was, I suppose, either when the word was
5 out that maybe the Governor was considering a veto, or
6 perhaps someone in the Bankers Association may have voiced
7 some question before that to me, but I didn't consider
8 it in the light of opposition.

9 Q Were you and Mr. Osorio partners during the time
10 these bills were being worked on?

11 A Yes, sir.

12 Q Was Mr. Carr a partner at that time?

13 A Yes, sir.

14 Q You may have given the information a minute ago.
15 If you did, I didn't get it down. What were the dates
16 covering the period of time when you, Carr and Osorio
17 were all three partners in this law firm?

18 A Well, we were all partners in a larger firm,
19 which was comprised of other partners as well from April
20 1, '69, I believe it was, until December 31, 1970. And
21 then for a brief period, in January of '71, Mr. Carr, Mr.
22 Osorio and I were partners, and this was terminated and
23 my present relationship began on February 1, 1971.

24 Q Let me see if I have this right. From April 1,
25 1969, to and including January 31, 1971, you, Osorio and

1 Carr were all three partners, either in a small firm or a
2 large firm.

3 A That is correct. There were two different
4 partnerships.

5 Q Two different partnerships, but you three were
6 continuous during that period of time. Is that correct?

7 A Yes, sir.

8 Q Did Mr. Carr have anything to do with these
9 House Bills 72 and 73?

10 A Very little.

11 Q What?

12 A The only thing I know, of my own personal know-
13 ledge, Mr. Hale, is what I have said about seeing him up
14 there on that day at the Senate, and other than that, I
15 don't recall what, if anything, he may have done.

16 Q Was National Bankers Life Insurance Company one
17 of your clients? The firm's clients?

18 A At that time only on a basis of specific
19 assignments. We weren't on general retainer or anything
20 like that.

21 Q Was the same thing true with the Sharpstown
22 State Bank?

23 A No, sir.

24 Q Was your firm counsel for the bank?

25 A No, sir.

Q Were you all counsel for Frank Sharp personally?

A Not to my knowledge. No, sir.

Q Do you know what the financial arrangement was with respect to the drafting of these bills? Who paid your firm for the drafting of these bills?

A To my knowledge, nobody ever did.

Q You can qualify to practice law to me!

(Laughter!)

CHAIRMAN MURRAY: Do we have a statute of limitations on this?

(Laughter!)

Q Did your firm bill somebody for these services?

A No. In response to your question, Mr. Hale, after the bills had been vetoed and the situation was a closed matter, I went to Mr. Osorio under the general routine we had in our office of any partner who produced an account was responsible for the billing of it, or the setting of the fee and so forth, unless that responsibility was specifically parceled out to someone else. And so, since he had originated it, I asked him if we should submit any bill on this matter. He said, "No," so I closed the file and that was that.

Q As far as you know, the firm was never paid then for your services?

A That is correct, sir.

1 Q Did Mr. Osorio ever tell you where he got the
2 idea for these bills?

3 A No. I don't think he did.

4 Q Do you know?

5 A I would have to qualify that by saying that Mr.
6 Osorio, over the years, has quite often had ideas for
7 bills of one sort or another and come up with them. So
8 I really didn't question him when he told me that here was
9 the format of what needed to be done. I just set to work
10 doing it.

11 Q Had the matter ever been discussed with you
12 prior to the time Mr. Osorio first asked you to draft such
13 legislation?

14 A This type of legislation? No, sir.

15 Q And that was in the summer of 1969?

16 A Yes, sir.

17 Q Now, the two bills that were introduced in the
18 first called session were House Bill 52 and House Bill 53.
19 Is that correct?

20 A Right.

21 Q Did the governor open the first called session
22 for these bills, do you recall?

23 A It's my understanding that he did not.

24 Q Did you ever have any contact with anyone else
25 purporting to represent the Sharpstown State Bank or the

1 National Bankers Life Insurance Company pertaining to
2 these bills during the time they were in their progress
3 during the Legislature?

4 A No, sir. Frankly, I can't feature any connection
5 or interest that National Bankers Life would have had in
6 the bills at all.

7 Q There is a gentleman by the name of Novotny.
8 Are you familiar with him?

9 A Just barely.

10 Q Did he contact you concerning this legislation?

11 A No, sir. Not that I recall.

12 Q Do you know of anyone who in any way attempted to
13 influence any member of the Legislature or any member of
14 the executive branch of the government, through the
15 medium of consideration to get their aid in passing these
16 bills?

17 A No, sir, I do not.

18 Q Either in money, or stock transactions, or market
19 tips, or anything else. Are you aware of any such type of
20 transactions?

21 A No, sir.

22 MR. HALE: Thank you.

23 CHAIRMAN MURRAY: Any other questions.

24 Mr. Slider?
25

EXAMINATION

BY MR. SLIDER

Q Mr. Palmer, did you attend the public hearing of House Bills 72 and 73 that was held in the House?

A No, sir.

Q Then you would not be aware of whether Mr. Falkner or a member of the Texas Bankers Association was present at that hearing or not, would you?

A I would have no idea, sir. I did not really follow the bills.

CHAIRMAN MURRAY: Mr. Nugent, do you have any questions?

MR. NUGENT: Yes.

CHAIRMAN MURRAY: Mr. Nugent.

EXAMINATION

BY MR. NUGENT

Q Mr. Palmer, using your hindsight and your prior study on this matter, do you feel that the people of the State of Texas would be benefited by a bill like this insuring their deposits above and beyond the F.D.I.C. insured amount at this time?

A I sure do. I thought it was a good bill then. I think it is a meritorious proposal now.

MR. NUGENT: No further questions.

CHAIRMAN MURRAY: Any other questions.

MR. McSHANE: Mr. Chairman, I have just a couple of questions.

CHAIRMAN MURRAY: All right. Mr. McShane.

EXAMINATION

BY MR. McSHANE

Q Mr. Palmer, when you visited with Mr. Calhoun, did you tell him of Mr. Sharp's interest in the bill?

A I don't know whether I did or not.

Q Is your answer that you don't recall?

A I just simply don't recall. That's my answer. Yes, sir.

Q When you visited with Mr. James, did you tell him of Mr. Sharp's interest in the bill?

A I believe I did. Yes, sir.

Q Did Mr. James appear to favor these bills?

A Oh, I wouldn't say that he was very positive in the matter. I think his attitude was one of just trying to assist me on a personal basis however he could in my endeavor.

Q And in addition to the suggestions, in a couple of things you mentioned earlier, did Mr. James do anything else to assist you on the bills?

A Not to my knowledge.

1 MR. McSHANE: I have no further questions.

2 CHAIRMAN MURRAY: Mr. Palmer, you're excused.

3 We appreciate your appearing here and we hope that if in
4 the next day or two some occasion arises where we would
5 like to call you back, I hope we may have the privilege of
6 calling you back for some other information.

7 As of now, I know of no reason why we need you.
8 Will you be in town the next day or two?

9 THE WITNESS: Let me see. Yes, I think I will,
10 sir. I'm trying to get a brief written.

11 CHAIRMAN MURRAY: Well, I don't think we'll
12 bother you. I just wanted to make sure whether you would
13 be around in case some question came up.

14 THE WITNESS: Yes, sir. I certainly would make
15 every effort to avail myself to the Committee.

16 CHAIRMAN MURRAY: Well, we appreciate your
17 courtesies in helping us out.

18 THE WITNESS: I'll leave a copy of a card with
19 counsel so that he can tell where to find me.

20 CHAIRMAN MURRAY: Thank you very much.

21 THE WITNESS: As I leave, I would like to thank
22 the Committee and counsel for their courtesy.

23 (The witness, Mr. Eugene Palmer, was excused.)

24 CHAIRMAN MURRAY: We have Senator Wilson here
25 whom we requested along with several other members of the

1 Legislature to appear if he would today, and he needs to
2 get back to chop kindling or something over there in East
3 Texas. So, we're going to take the next ten or fifteen
4 minutes to hear from Senator Wilson and then we are going
5 to adjourn until 1:30. So, if any of you all want to
6 leave, you may do so quietly.

7 Right now let's hear from Senator Wilson and when
8 we get through with him we'll adjourn to whatever time the
9 Committee agrees on. I'm suggesting that 1:30 is the
10 time we had planned to pick up. We'll decide that in a
11 couple of minutes.

12
13 SENATOR CHARLES WILSON

14 was called as a witness and, after having been first duly
15 sworn, testified as follows:

16 EXAMINATION

17 BY MR. McSHANE

18 Q Senator, for the record, would you please state
19 your name?

20 A Charles Wilson.

21 Q And again for the record, what is your address?

22 A 1000 Crooked Creek, Lufkin.

23 (Laughter!)

24 Q I was hoping you would say that.

25 All right, sir. And for the record again, what

1 is your occupation?

2 A I'm the manager of a lumber yard and a State
3 Senator.

4 Q How long have you been a State Senator?

5 A Five years.

6 Q All right, sir. On the table there in front of
7 you you will see what has been marked as Committee Exhibits
8 3 and 4, which are House Bills 72 and 73 which were
9 introduced and passed in the second called session of the
10 Sixty-first Legislature.

11 A Yes, sir.

12 Q We have heard testimony that you were the
13 sponsor in the Senate of those bills. Is that correct?

14 A That's correct.

15 Q Would you tell the Committee how you came to be
16 the sponsor of these bills?

17 A Yes, as best I can. The bills—the Governor had
18 opened the call at the very last special session. As I
19 recall it was a real close thing on time, and Senator
20 Strong was the sponsor of the bills, and I had not paid
21 very much attention to them. Then Senator Strong and
22 Senator Patman had a very difficult and vigorous confron-
23 tation, and Senator Strong later, and I believe at some
24 point Senator Patman, mentioned to me that the bills could
25 not be passed with Senator Strong as the sponsor because he

1 and Senator Patman had this personal problem and that they
2 were going to have another sponsor. Senator Patman had
3 raised the only objection in the Senate. I understood
4 that the bills had not been opposed in Committee in the
5 House during the regular session. I asked Senator Patman
6 if there was anything wrong with the bills. He said,
7 no, that as far as he knew there wasn't; that he didn't
8 really think he was for them but that he didn't know of
9 anything wrong with them but that it was just simply a per-
10 sonal matter between him and Senator Strong. There was
11 no other opposition. So I agreed to make the motion to
12 suspend the rules.

13 Q Now, it was in compliance with the request of
14 Senator Strong that you agreed to sponsor the bills?

15 A That's the way I recall it.

16 Q Were you requested to sponsor the bills by anyone
17 else?

18 A No. It was either Senator—I am, in my own mind,
19 sure that it was Senator Strong. It could have been
20 another senator, but I'm relatively sure it was Senator
21 Strong.

22 Q All right, sir. Did you have any contacts
23 with Mr. John Osorio concerning the bills?

24 A No.

25 Q And did you have any contact with Mr. Eugene

1 Palmer concerning the bills?

2 A Just to the extent that he did a brief for me
3 for a committee hearing. As it turned out, we never had
4 the committee hearing, but I wanted to, you know, to be
5 able to explain the bills, and if any, you know, if there
6 was any floor debate about the bills I wanted to have a
7 better understanding of them, although I had read them and
8 I thought I understood them.

9 Q Did you understand them to provide insurance
10 of bank deposits in addition to F.D.I.C. rather than in
11 lieu of F.D.I.C.?

12 A Yes, sir. There was no question in my mind about
13 that.

14 Q Did you have any contact with Senator Schwartz
15 concerning these bills?

16 A No. Oh, well, other than, I believe, he offered
17 an amendment.

18 Q Do you recall the thrust of that amendment?

19 A The amendment had to do with private banks, as
20 I recall.

21 Q And was the thrust—as you recall, was the
22 thrust of the amendment to include private banks—

23 A Yes, sir.

24 Q —in the operation of these bills?

25 A Yes, sir.

1 Q And it was your testimony that Senator Patman
2 stated that there was nothing wrong with the bills; it was
3 merely his personal feud, if you will, or problem that he
4 had with Senator Strong?

5 A Yes.

6 Q Do you have any idea why Senator Strong asked
7 you to sponsor the bills, rather than someone else?

8 A Just lucky, I guess. I was Chairman of the
9 Banks and Banking Committee, and I sat back there, and
10 of course we're good friends, and I was handy.

11 Q As Chairman of the Banks and Banking Committee,
12 did you have occasion to introduce and sponsor a number of
13 banking bills?

14 A I'd say three or four.

15 Q In addition to your fellow senators, did you have
16 contact with any other public officials concerning these
17 bills?

18 A No.

19 Q Do you know of any type of bribe or voluntary
20 consideration being given to any public official in return
21 for favorable action on these bills?

22 A No.

23 Q Do you know of any attempt to bribe or reward
24 any public official in return for favorable action on
25 these bills?

1 A No. Nothing other than, you know, what has been
2 allocated in the newspapers since.

3 Q I'm asking if you know from your personal know-
4 ledge.

5 A No.

6 MR. McSHANE: Mr. Chairman, I believe I have no
7 further questions of this witness.

8 CHAIRMAN MURRAY: Any other questions?

9 Mr. Hale?

10
11 EXAMINATION

12 BY MR. HALE

13 Q Did you have any contact, Senator Wilson, with
14 representative Tommy Shannon?

15 A No.

16 Q Were you ever contacted by Waggoner Carr?

17 A No.

18 Q Frank Sharp?

19 A No.

20 Q Did you know Frank Sharp?

21 A No.

22 Q Did you have any connection with Sharpstown
23 State Bank—

24 A No.

25 Q —financial or otherwise?

1 A No.

2 Q Or National Bankers Life Insurance Company?

3 A No.

4 Q Did you know of anything during the time these
5 bills were being handled of any connection between those
6 institutions and these bills?

7 A No.

8 Q Did you, by hearsay or otherwise, have any
9 intimation that there might conceivably be any type of
10 consideration passing to any member of the Legislature
11 or any member of the executive department of the govern-
12 ment in consideration of their support of such legislation?

13 A No.

14 Q Did anybody ever approach you and offer you any
15 type of consideration for your support of these bills?

16 A No.

17 Q By stock tips, or otherwise?

18 A No.

19 Q Offer you an opportunity for you to make a lot
20 of money if you would pass these bills?

21 A No. No, I was not.

22 Q Do you know of any such offer made to anybody
23 else?

24 A No. Not personal knowledge. No.

25 Q Did you ever talk to Lieutenant Governor Ben

1 Barnes about these bills?

2 A No.

3 Q Was there any understanding of any kind between
4 you and the Lieutenant Governor about the bills?

5 A No. No.

6 Q He did not ask you to sponsor the bills?

7 A No.

8 Q Was there anything peculiar about the legislative
9 history of these bills in the Senate, other than the fact
10 that you changed sponsors? I suppose that would be a little
11 peculiar, but you have explained that. Was there anything
12 peculiar about the passage of these bills? Any difference
13 from the way any other bills are passed?

14 A Well, only the time element, Mr. Hale. The
15 bills ordinarily would have probably gone to Banks and
16 Banking.

17 Q What Committee did they go to?

18 A County, Cities and Towns, I believe, because
19 they had a floor report committee and Banks and Banking
20 didn't.

21 Q And the bills were floor reported in this
22 instance?

23 A Yes, sir. That's why I never had occasion to
24 make use of Mr. Palmer's brief.

25 Q There was nothing unusual about floor reporting

1 bills in the Senate, is there?

2 A No. No, no. There is nothing unusual at all.
3 Especially where there is a time element involved. And
4 especially where our colleagues in the House have held
5 hearings.

6 Q I didn't hear the last?

7 A When our colleagues in the House have held hear-
8 ings, and there's been no opposition.

9 Q But there are numerous bills that go through the
10 Senate, though, on which there are never committee hearings
11 held?

12 A Yes, sir. I would say at least half, maybe a
13 majority.

14 Q So the fact that there wasn't a committee hear-
15 ing held on these bills, and the fact that the bills were
16 floor reported was not anything out of the ordinary?

17 A No. In fact it was what you would expect, the
18 time situation being such as it was. I mean, any bill
19 would have gone to that committee that had been included
20 as an emergency measure in the last couple of days.

21 Q Did you make an explanation of these bills to
22 the Senate?

23 A I made a brief explanation at the time I moved
24 that the rules be suspended. The explanation I made was,
25 and it was brief, and I really—it's possible that someone

1 questioned me, but I don't recall it—that the bills simply
2 provided additional insurance and that I knew of no
3 opposition to them.

4 Q And it was your understanding of the bills at
5 that time that they provided excess insurance in addition
6 to Federal Deposit Insurance Corporation, rather than in
7 lieu of Federal Deposit Insurance Corporation insurance.
8 Is that true?

9 A That's right. The idea that it was in lieu of
10 was never raised. Nobody ever mentioned that. I don't
11 even recall—I don't recall Senator Patman ever raising
12 that point. It was just generally explained—and the way
13 I understood it was that people would be getting an added
14 protection which wouldn't cost them anything.

15 Q On that basis, did you see anything wrong with
16 the bill?

17 A No. If I had of, I wouldn't have sponsored it.

18 Q Do you see anything wrong with it now?

19 A Only to the extent that it has been questioned.
20 If we had it to do again, I would want to pursue the
21 question further, and completely, and have absolute—be
22 absolutely convinced that it is not in lieu of. Now, as
23 I understand it, that is a legal question that is unresolved
24 at this point. And I would think that all of the members
25 of the Legislature would want that resolved. If in fact

1 it is resolved to the effect that it is in addition to, well,
2 I think that the bills would pass almost unanimously in
3 both Houses and I continue to think that they are meritor-
4 ious.

5 MR. HALE: Thank you.

6 CHAIRMAN MURRAY: Any other questions?

7 MR. NUGENT: I have a question.

8 CHAIRMAN MURRAY: Mr. Nugent.

9
10 EXAMINATION

11 BY MR. NUGENT

12 Q Somewhere I have heard that Senator Patman con-
13 tacted his father who seemingly is an expert on bank
14 business relative to these bills. Did the Senator report
15 back to you what Congressman Patman told him?

16 A I don't remember, Mr. Nugent. I recall that
17 too, and it would certainly be something I would expect him
18 to do, because Senator Patman is basically—is usually
19 very suspicious of any kind of banking legislation. And
20 I assume that since his father is a national expert on
21 these matters that he does talk to him. The only thing
22 I recall is—and Senator Patman is a very thorough man
23 too, as you know. The only thing that I recall is that I
24 asked him if there was anything wrong with them, or if he
25 was just really angry at Senator Strong.

1 Q And what was his reply?

2 A His reply was that he was, well, that he was
3 somewhat reluctant to vote for them, but that there was
4 nothing wrong with them as far as merits were concerned,
5 or that he had been convinced that there was nothing
6 wrong with them. His studies had indicated there was
7 nothing wrong with them. And remember that he could have
8 killed the bills with a filibuster, or a tag if he wanted
9 to.

10 Q Well, at that particular time, if he had affixed
11 a tag to the bills, they would have been dead.

12 A As I recall, that is exactly right. In fact—
13 and I'm sure that counsel has studied this in detail, but
14 I believe he did affix a tag and I believe that Senator
15 Strong moved to remove that tag, you know, to suspend the
16 Tag Rule, and Senator Strong failed, which would have
17 meant that the bills could not be heard before the Com-
18 mittee until after the termination of the special session,
19 which would, of course, mean that they couldn't pass the
20 Senate. And that then at a later date Senator Patman
21 removed that tag.

22 I didn't address myself or become involved in any
23 of the negotiations or any of the persuasions to try to
24 get him to remove the tag one way or another. I simply
25 said that I would make the motion to suspend the rules to

1 consider the bills.

2 Q Then for all intents and purposes in the legis-
3 lative history, he had control of the life or death of
4 that bill until he was satisfied and removed that tag?

5 A Any member of the Senate would.

6 Q But in that particular instance he had already
7 affixed the tag and did have control?

8 A That's what I recall. I think that's right.
9 The records of the Senate would reflect that.

10 MR. NUGENT: Mr. Wilson, we sincerely appreciate
11 your coming before us and thank you. As I understand it
12 you are voluntarily here and not under subpoena.

13 THE WITNESS: That's right.

14 CHAIRMAN MURRAY: Any other questions?

15 Mr. Haynes.

16
17 EXAMINATION

18 BY MR. HAYNES

19 Q Senator Wilson, you said that after Senator
20 Patman had been convinced that these bills were all right,
21 do you know who convinced them that they were all right?

22 A I've read in the paper, but I don't know whether
23 that's what you want to know or not.

24 Q To your personal knowledge?

25 A No, I did not know.

1 Q Thank you.

2 A But knowing his thoroughness, I felt if he had
3 been convinced that he probably had good reason.

4 Q But to your personal knowledge you did not know
5 who convinced him?

6 A No, sir.

7 MR. HAYNES: All right. Thank you.

8 CHAIRMAN MURRAY: Any other questions?

9 Thank you, Senator, and let me again express
10 the appreciation of the Committee for your appearing here.

11 THE WITNESS: Thank you. And if you need me,
12 I'll be on Crooked Creek.

13 CHAIRMAN MURRAY: Thank you, Senator.

14 The Committee will stand recessed until 2:00
15 o'clock.

16 (The witness, Senator Charles Wilson, was
17 excused.)

18 (WHEREUPON, the hearing was adjourned until 2:00
19 o'clock p.m.)
20
21
22
23
24
25

1 WEDNESDAY, AUGUST 18, 1971

2 AFTERNOON SESSION

3 (The hearing was reconvened at 2:00 p. m.,
4 pursuant to the luncheon recess.)

5 CHAIRMAN MURRAY: The Committee will come to
6 order.

7 Counsel, will you call your witness.

8 MR. McSHANE: Mr. Chairman, as everyone probably
9 knows by now, our first witness for the afternoon is Mr.
10 Frank W. Sharp.

11 CHAIRMAN MURRAY: Mr. Sharp, will you stand and
12 be sworn.

13
14 MR. FRANK W. SHARP

15 was called as a witness and, after having been first duly
16 sworn, testified as follows:

17
18 EXAMINATION

19 BY MR. McSHANE

20 Q Will you state your name for the record, please,
21 sir?

22 A Frank W. Sharp.

23 CHAIRMAN MURRAY: Just a second now, before you
24 go on. Mr. Sharp, you realize, of course, that you're
25 under oath and that your testimony is subject to perjury if

1 it is not followed, I mean if it isn't the truth. You
2 have the right to counsel there, and we trust that you
3 will use it if you need it, but we're trying to handle this
4 in as correct a way as we can and at the same time working
5 no hardship on anybody, you, or the press, or the public.

6 A Thank you, Mr. Chairman.

7 CHAIRMAN MURRAY: So, if you will call my
8 attention to anything that is irritating, we'll try to go
9 from there. But I wanted you to understand the circum-
10 stances under which this testimony was given.

11 Thank you, sir.

12 Q All right, Mr. Sharp, you are accompanied by
13 counsel. Is that correct?

14 A That's right.

15 Q Would your counsel please identify themselves
16 for the record of this committee?

17 MR. SUSMAN: Morton L. Susman of Houston.

18 MR. HILL: Jerry Hill, Houston.

19 MR. McSHANE: Thank you, gentlemen.

20 Q Mr. Sharp, what is your occupation?

21 A Now? Or Yesterday?

22 Q Yes.

23 A I'm a subdivider of Sharpstown.

24 Q Are you now a banker?

25 A I doubt it.

1 Q Were you at one time a banker?

2 A Yes, I was.

3 Q And in what capacity were you a banker?

4 A Chairman of the board.

5 Q Of which bank, sir?

6 A Sharpstown State Bank.

7 Q All right, sir. When did you first conceive of
8 the idea of having bank deposits insured at the state
9 level?

10 A Well, I'm very poor at remembering exact dates,
11 but

12 Q If you can, just narrow it down to the best of
13 your ability, that will be fine, sir.

14 A Well, the best of my belief is that probably in
15 1967 or maybe '68.

16 Q Mr. Sharp, do you recall how you were first
17 introduced to this idea?

18 A Well, I'm not sure of the first introduction of
19 it. I had many conversations with many people concerning
20 it, but the best information that I received on the insur-
21 ance of deposits, I think, was from the personnel of the
22 State Banking Department employees and the F.D.I.C.
23 employees.

24 Q And it's your testimony that you discussed this
25 matter at length with the employees of these two departments.

1 Is that correct, sir?

2 A Well, with some of the employees, I think.

3 Q Did you discuss the matter with other members of
4 the Banking Committee? Other bankers?

5 A Not to any great extent.

6 Q Now, Mr. Sharp, were you in favor of having bank
7 deposits insured at the state level?

8 A Yes, sir.

9 Q Would you tell us why, sir?

10 A Well, there are several reasons, the first being
11 that by having a separate entity for insuring the deposits
12 on the bank, it gave a small bank to some extent the same
13 break with the large banks. This was number one. Number
14 two, it would eliminate the big bank monopoly in our state
15 by giving each small bank the privilege of having
16 \$100,000.00 deposits in their bank instead of it being
17 moved to the big banks.

18 Q Was it our contention or feeling that this was
19 how the big banks had achieved what you call a "monopoly,"
20 by virtue of their stronger capital base?

21 A Yes. And by then—they worked— You see, it
22 is my belief that the— It is my belief that F.D.I.C.
23 works extremely close with all the big banks and if there
24 is any advantage or break going to be given to a bank by
25 the F.D.I.C., it will be the big bank itself.

1 Q So, it was your opinion that the workings of the
2 F.D.I.C. were in part against the smaller banks; that they
3 favored the big banks?

4 A That is very accurate.

5 Q All right, sir. And for this reason, did you
6 wish to be able to remove your bank from the coverage of
7 the F. D.I.C.?

8 A Yes.

9 Q All right, sir. When did you first decide to
10 attempt to get legislation passed which would accomplish
11 these goals?

12 A Well, again, Mr. McShane, I'm not very good on
13 remembering exact dates.

14 Q Right. Just the best that you can do, sir.

15 A The best that I can remember is, I believe the
16 first person that I discussed this with was Mr. Gus
17 Mutscher. And I was introduced to Mr. Mutscher by Mr.
18 Cecil Haden of Houston, and the reason and the manner in
19 which the introduction was made is this, as well as I can
20 remember: that Mr. Mutscher was explaining to Mr. Haden
21 over one weekend that it was his great desire to cause a
22 broad-based economy growth for the entire state, and not
23 have it centralized in the urban areas, but he could not
24 come up with an idea that he was pleased with at that time.

25 Mr. Haden told him that he had a friend in Houston

1 that he would like for him to meet—that being me—and that
2 I had been working and thinking of something for quite
3 sometime and the two thoughts put together just might be
4 something worth while for his program.

5 Q And what Mr. Haden was referring to, was that
6 this state deposit legislation?

7 A Yes.

8 Q Now, as best you can, approximately what point
9 in time did this meeting between Mr. Haden and Mr. Mutscher
10 take place?

11 A Well, it's my belief that it was sometime in the
12 first quarter of 1969, to the best of my memory.

13 Q Probably around, say, January or February of '69?

14 A It probably could have been. Yes, sir.

15 Q All right, sir. When were you actually intro-
16 duced to Mr. Mutscher by Mr. Haden?

17 A Well, it was very shortly after that. It was
18 in a period of a week or ten days after the first meeting,
19 which would still make our meeting in the first quarter
20 or some—as you stated—January or February.

21 Q All right, sir. Where was this meeting?

22 A Well, my first meeting, the first time I
23 actually visited with Mr. Mutscher, was in Mr. Cecil Haden's
24 office, but it was for a very short time. And he said,
25 "Now that I've met you, I would like to come by your office

1 and let's, if you will take the time out, where we can
2 sit down and you give me your ideas and I can have some
3 ideas, and there might be an area in which we can put the
4 thoughts of the two of us together that might make a
5 progressive program." And this was his thought.

6 And he came by my office as I remember in about
7 two weeks.

8 Q In about two weeks later, after you had met
9 Mr. Haden?

10 A Yes.

11 Q Okay.

12 A And he came to my real estate office up on the
13 tenth floor of the Sharpstown State Bank Building. I
14 remember very well.

15 Q Mr. Sharp, let's make sure that we still have
16 this chronology correct. Since there were only one or
17 two weeks in between these various meetings we would still
18 be possibly late February, 1969.

19 A It could be.

20 Q Is this a fair statement?

21 A It could be.

22 Q All right, sir. What was the substance of your
23 meeting with Mr. Mutscher at your office?

24 A Well, I remember using an illustration to him
25 that my nephew, who buys and sells considerable real estate

1 in West Texas, had sold some property up near Junction,
2 Texas, that amounted to one hundred twenty-five, maybe
3 \$130,000.00. And the thing I said to Mr. Mutscher is that,
4 "If there was a \$100,000.00 deposit, and those in a bank in
5 Junction, that probably some of that money, or most of that
6 money, would be left in the Junction bank and the bankers
7 in Junction could use that for the purpose of expanding
8 the economy in this little small town."

9 I said, "Now, this is just one, and I think
10 there are many in the State of Texas that this could be
11 very well—this illustration could work very well on."

12 Q In other words, you gave Mr. Mutscher this
13 example as an example of how legislation of this type
14 would help small banks and thereby help the small com-
15 munities that contain those small banks. Is that a fair
16 statement?

17 A This is correct. Yes, sir.

18 Q Did you give Mr. Mutscher any other reasons for
19 your desire to pass this legislation?

20 A Yes. Well, I can't remember whether I did at this
21 particular meeting or not, but I explained to him that I
22 thought I was not by myself in small banks of having the
23 F.D.I.C. not being at all friendly to us because they are
24 using the whip on the small banks and the progressive banks
25 to keep them in line with what the big banks want us to do.

1 Q Mr. Sharp, is your testimony then that you did
2 advise Mr. Mutscher, either at this meeting or at some point
3 in time, that one of your purposes was to be able to get
4 out from under the coverage of the F.D.I.C.?

5 A Yes.

6 Q Was anyone else present at the meeting in your
7 office that we have been talking about?

8 A No, sir.

9 Q Was there any decision or commitment made by
10 Mr. Mutscher on this legislative program at this meeting?

11 A No, it was not. I remember that he told me that
12 this is a very serious—I mean a serious program. It is
13 something that could not be done in a hurry; that every—
14 any vice that could be had, that he wanted it done, and
15 that he wanted to talk to Tommy—who I later found out
16 was Mr. Shannon, Mr. Tommy Shannon; that Mr. Tommy Shannon,
17 if he didn't know about things of this nature, he certainly
18 knew the proper person to call.

19 Q Referring to Mr. Shannon as knowing the proper
20 person to call?

21 A Yes, sir. So I remember very shortly after this
22 meeting I talked to Mr. Mutscher again and he said he had
23 talked to Tommy; Tommy was very enthused over the poss-
24 ibilities of what could be done with the idea. And that
25 in my opinion was the groundwork or formation of what we

1 were trying to do.

2 Q All right, sir. Now, this was during the
3 regular session of the Sixty-first Legislature, which
4 would be the spring, the first and second quarter actually
5 of 1969. Are you aware of whether legislation of this
6 type was introduced in the regular session of the Sixty-
7 first Legislature?

8 A No, sir, it was not.

9 Q Were you concerned over this lack of legislation
10 being introduced?

11 A Well, I would say that I wasn't too happy about
12 it. And I think at one time I expressed that to Mr.
13 Mutscher, and Mr. Mutscher made this explanation to me:
14 that inasmuch as this was the first time that he had been
15 Speaker of the House, there were many things that he had
16 to get acquainted with himself, and that they had worked
17 hard—at the time I talked to him, he said, "We have
18 worked hard trying to put together a program that we think
19 the membership will—that the legislators will approve."
20 He said, "I cannot allow this bill to be introduced in the
21 regular session because if I allowed this one bill to come
22 up, there are many legislators out there that have pro-
23 grams that they want introduced." And he said, "It really
24 would cause just chaos in the program that we have worked
25 so hard at trying to put together." And he said it was

1 just impossible—

2 Q This was Mr. Mutscher's explanation of why he
3 hadn't been able to get your bills introduced in the
4 regular session?

5 A I believe the expression that he used was that,
6 "Father Time had not been working in our favor."

7 Q This was what Mr. Mutscher said?

8 A Yes. I believe that was his explanation.

9 Q Did Mr. Mutscher promise you at this time that
10 although he couldn't do it in the regular session that he
11 would continue his efforts to get the bills introduced and
12 passed for you?

13 A I can never remember Mr. Mutscher ever making
14 me a promise or putting anything in words of that—

15 Q The word, "promise" was never used?

16 A No, sir. As far as I can remember, Mr. Mutscher
17 never used that word.

18 Q All right, sir. Do you recall in early July of
19 1969, a meeting with Mr. Mutscher at the Rice Hotel?

20 A Yes, I remember. I think the meeting that you
21 are referring to is— Mr. Mutscher was in Houston this
22 day and called on my office. I wasn't in at the time. He
23 left word with my secretary that he was going to be there
24 during the day but he had several conferences with other
25 people that he came there to make and that if I had the

1 time, he would appreciate me coming by, or let him know
2 about what time I could come by, and come by so that we
3 could meet—chat for a while, I believe, was the expression
4 I called back and made the appointment. I went by and had
5 a discussion with him. Yes.

6 Q Sir, what was the substance of that discussion?

7 A Well, I at first took it more or less as that
8 the Speaker needed someone to cry on their shoulders.

9 Q The Speaker had some problems at this time?

10 A —meaning Mr. Mutscher. He told me that he had
11 a considerable loss in some stock that he had bought,
12 namely, Siboney.

13 Q Siboney?

14 A Siboney. Yes. And Siboney is a company that
15 Sharpstown Realty Company had signed a letter of intent.
16 He bought considerable stock in Siboney when this announce-
17 ment was made. And when it was evident that the Sharps-
18 town Realty Company and Siboney was not going to close
19 their trade, the stock went down considerably, and he was—

20 Q Did he say how much money he had lost in that
21 transaction?

22 A No, he did not tell me how much he had lost, and
23 I didn't ask him. I remember saying to him, I said, "Well,
24 I think you and Cecil Haden both should be kicked, because
25 both of you bought a lot of this stock and you didn't say

1 a word in the world to me about it, and I really think
2 you should have." But anyway—

3 Q Do you know if it was Mr. Haden that prompted
4 Mr. Mutscher to make that stock purchase?

5 A Well, I don't—of course, I would have no way of
6 knowing, but it is my opinion that Mr. Mutscher bought
7 this on his own, would be my opinion on that.

8 Q Okay. What else was discussed at this meeting
9 at the Rice Hotel?

10 A Well, Mr. Mutscher, as I remember, had a suite
11 there that was several rooms connected, and I had the
12 thought that he was carrying on a dental business up there
13 rather than legislative business because he was going from
14 one room to another trying to talk to all of the people.
15 He and I were in a little dinette next to the kitchen
16 there.

17 Q But you were by yourselves?

18 A We were by ourselves. Yes. As I was getting
19 ready to leave he said, "I might be interested in buying
20 some of your National Bankers Life Insurance Company's
21 stock to help make up for the loss that I have on Siboney."
22 As I remember my remarks to him were that I would be very
23 complimented if he did buy the stock. And he hastened
24 on, or he did fill in some way. He said, "Let me say this:
25 if I buy any of the stock, I want you to know that I'm

1 free, white, and twenty-one, and I'll do it on my own."

2 I smiled and he smiled and that was it.

3 Q You just kind of sat there and smiled at each
4 other, huh?

5 A Yes. It wasn't glaring or anything.

6 Q Did you mean anything by your smile other than
7 just to acknowledge Mr. Mutscher's smile?

8 A Well, I'll just have to let you go in the order
9 of things.

10 Q Okay, sir. What additionally did you discuss
11 at this time?

12 A Well, he asked me—we were more or less standing
13 in the doorway or in the hall. He asked me, "Well, what
14 is the—what's going on with National Bankers Life? What's
15 the story." I said, "Well, there is considerable enthusiasm
16 with all of the employees of the company." I said, "The
17 report that I'm getting from the management is that I'm the
18 first person that has ever owned control of the stock in
19 this company that showed any real interest in the people
20 that was working for the company. They were appreciative
21 of that, and also that Mrs. Sharp and I visited with the
22 production group of the company in Mexico, and we were
23 very interested in them and they seemed to appreciate it
24 that we were interested in them." I said, "Also, Mr.
25 Quincy Adams of the Ling and Company has decided to make a

market on the stock."

2 Q Let me stop you right there, Mr. Sharp. What do
3 you mean by, "Make a market on the stock"?

4 A Well, I'm not sure that I can give you a full
5 explanation of that, other than some brokerage firm has to
6 take an interest and make this a direct interest of theirs
7 to buy and sell the stock.

8 Q As a general—

9 A Wait for the gentlemen to get through here. It's
10 hard for me to concentrate with a lot of—

11 Go ahead, if you will, and finish up, please.

12 (Brief delay.)

13 Q Mr. Sharp, now, at this meeting you indicated to
14 Mr. Mutscher that Mr. Quincy Adams was going to make a
15 market in the stock. Did you indicate to Mr. Mutscher that
16 because of this move of making a market in the stock, that
17 he could probably make money by purchasing NBL stock?

18 A Mr. McShane, I can't ever remember making a
19 direct remark to Mr. Mutscher in that language ever. I
20 think I would be really degrading his intelligence by
21 making such a remark.

22 If I explained to him what everyone was trying
23 to do, certainly that would be a sufficient explanation.
24 I would say this: if Mr. Mutscher, in all fairness and all
25 truthfulness in every way, that it was certainly my feeling

1 that if Mr. Mutscher bought any stock at that time, and
2 if he didn't make a profit, I would be very disappointed
3 at it.

4 Q Was there any relationship between Mr. Mutscher's
5 purchase of the NBL stock and the introduction and passage
6 of the Banking Bill, House Bills 72 and 73 that incor-
7 porated your concept of state insurance for bank deposits?

8 A Mr. McShane, by this time of the year I had
9 become very well acquainted and become very good friends,
10 I felt, with Mr. Mutscher and I would say that there was
11 never any language used to this extent, but I would also
12 confess to you that in some degree, if not one hundred
13 per cent degree, there was certainly a tacit understanding
14 to that extent.

15 Q Mr. Sharp, at this time we're going to take a
16 very brief intermission. I'm informed that we need to
17 change the tape. We'll start up again in just a minute.

18 (Brief recess.)

19 CHAIRMAN MURRAY: All right, Mr. McShane, if you
20 will continue.

21 Q Mr. Sharp, is this a fair statement that there
22 was a tacit understanding between yourself and Mr. Mutscher
23 to the effect that you would assist Mr. Mutscher in pur-
24 chasing NBL stock and he would assist you in your legisla-
25 tive program? Is that a fair statement? I just want to

1 get this in the record.

2 A Well, it doesn't work that way. I didn't help
3 him to get the stock, because, Mr. McShane, I never at
4 any time sold any of my stock. I would say that I would
5 put him in touch with Mr. Quincy Adams, who was with the
6 Ling and Company that was instrumental in handling the
7 account of National Bankers Life. Yes, to that extent.

8 Q And was it your understanding that through your
9 bank you would assist Mr. Mutscher in financing these
10 stock purchases?

11 A Well, that didn't come at this meeting. Really,
12 when we finally walked off from each other, when I walked
13 off from his door where he had other people in there, he
14 had not definitely made up his mind whether or not he was
15 going to buy any of the stock. But the next day, or soon
16 thereafter, he called me and said that he would like to
17 buy some of the stock and that some of his associates, I
18 believe, was the expression that he used, would like to
19 buy some. He named Mr. Shulte, Mr. Shannon, Mr. McGinty,
20 and then he paused a little bit, and he said, "I would
21 like for my father to have some of the stock."

22 And I said, "Well, Gus, whoever you nominate
23 that wants to buy the stock, that's your business, not
24 mine."

25 Q Mr. Sharp, let me interrupt you here. Did he

1 indicate at this time that he would need financing, that
2 he or any of these other parties would need financing for
3 the purchase of the stock?

4 A Yes, sir. That is what I was fixing to say.

5 Q Okay. Go ahead.

6 A He said, "All of this, of course, would depend
7 on whether or not we could get it financed."

8 And I said to him, "Well, Gus, the first step
9 in my opinion is that you should talk to Mr. Quincy Adams
10 and let him see if there is enough stock in his portfolio
11 to sell you the stock that you would want, and then,
12 after you find out if he has the stock on hand, then—"
13 And he said, "I'll have to have someone to help me finance
14 it." I said, "Well, I don't think that's going to be a
15 big problem. Of course, it will all depend on what their
16 financial statements are."

17 I don't know whether I explained it to him
18 specifically at this time or not, but the formula for loan-
19 ing the money is that it had to be on their statement, or
20 some asset other than the stock itself. And I said, "If
21 that can be done, I'm sure that you won't have any problem
22 at borrowing the money from our bank." I said, "However,
23 I'm not the loan officer, but you first make contact with
24 Mr. Quincy Adams and see if he has the stock, and then
25 maybe we could take it up from there."

1 Q All right. To your knowledge, did he make con-
2 tact with Mr. Quincy Adams as to the availability of the
3 stock?

4 A Yes, he did. And as I remember at this conver-
5 sation, he asked me if I would call Mr. Adams and tell him
6 that he was going to call. And I either called Quincy
7 Adams or John Osorio, one of the two; I don't know which.
8 I probably—I might have called both of them and told
9 them to look out for the call. And that was the first
10 phase of them buying the stock, as I remember it.

11 Q And I assume that when they did call they were
12 told that a sufficient amount of the stock was available?

13 A Yes.

14 Q And then did they contact you in reference to
15 the financing of the stock purchase?

16 A No. The bank didn't operate on that basis, Mr.
17 McShane. The loan officers of the bank always made the
18 loans, and they made it on the financial statements them-
19 selves. I had more or less made a policy decision that I
20 certainly did not object to it and certainly that it had
21 my blessing.

22 Q Now, what policy decision do you refer to?

23 A Meaning that it would be agreeable with me if
24 they did borrow the money there at the Sharpstown State
25 Bank.

1 Q Who was the loan officer that handled the trans-
2 action?

3 A I believe it was Joe Novotny.

4 Q Were you physically present when Mr. Mutscher
5 signed his note?

6 A I beg your pardon, sir?

7 Q Were you present when Mr. Mutscher signed his
8 note at the bank?

9 A Well, I'm not sure. Mr. Mutscher signed more
10 than one note at our bank. I was present at one or two
11 times. Now, are you talking about when he—

12 Q When he financed the purchase of the NBL stock.

13 A The first purchase?

14 Q That's correct.

15 A I believe Mr. Mutscher signed that—he signed
16 that note in my office. I believe he signed his there.

17 Q Were any of the other persons he mentioned
18 present in your office at that time?

19 A No. I don't believe—I believe they probably
20 went to Mr. Novotny's office. And let me state to you
21 and for the record, I am not absolutely sure that Mr.
22 Mutscher did sign the first note in my office, but I do
23 believe he did.

24 Q All right, sir. Now, for a moment I would like
25 to go into the drafting stage of these bills. We discussed

1 the concept and now we'll discuss the drafting.

2 To your knowledge, who drafted the bills?

3 A Well, it has always been my belief that Mr.
4 Eugene Palmer drafted them.

5 Q Who instructed Mr. Palmer to draft the bills?

6 A Well, I think Mr.—well, I know I did not, but
7 I'm sure that it was John Osorio or some of his associates.

8 Q Do you recall approximately when Mr. Palmer was
9 instructed to draft the bill?

10 A No. I'm very poor, very poor at remembering
11 dates. Maybe if you have an instrument I could—if you
12 could—

13 Q Would it have been sometime after the regular
14 session, possible middle summer of '69?

15 A Well, now—

16 Q Let me say it another way.

17 A Yes, sir.

18 Q Did you receive a draft of this?

19 A I received what was explained to me was a rough
20 draft, "first thoughts," so to speak, on the bill.

21 Q And who presented this rough draft to you?

22 A I can't remember whether it was mailed to me or
23 whether John Osorio left it in my office on one of his
24 visits, but in any event it was on my desk, or on my
25 secretary's desk and I received it. I can't remember just

1 how it got there, but I did receive it.

2 Q Did anyone explain the bill to you, or the rough
3 draft to you?

4 A Well, I believe they depended on my ability to
5 read it and to analyze it on that. I made two suggestions,
6 I believe, to John Osorio on the bill.

7 Q After your reading of the bill?

8 A After my reading of the bill.

9 Q What were those suggestions?

10 A Well, the first one was that it be moved—that
11 the governing body of it be moved from the Finance
12 Commission to the Banking Commission. That was number one.
13 And the second one—

14 Q Sir, let me stop you there. What was your reason
15 for that suggestion?

16 A Well, it was my belief that the Banking Commis-
17 sion would be a fair body for all banks, big, little or
18 what have you, whereby the Finance Commission, as some of
19 you know—and it may be a surprise to others—is, I have
20 turned it in to some of our other meetings, that you more
21 or less buy your seat on the Finance Commission by the
22 size of the contribution that you make, and then after you
23 become a member on this Commission, why, you get in what's
24 known as the musical chair of the Banking Commissioner.
25 And this, with knowing the activities and policies more or

1 less of this Commission, I thought that the Banking
2 Commission itself was much more solid and a much more
3 reliable source than the—

4 Q I see. What was your second suggestion on these
5 bills, or on this rough draft?

6 A In the first bill it was—

7 MR. McSHANE: Mr. Chairman, Mr. Nugent would
8 like to ask a question.

9 Just a minute, Mr. Nugent would like to ask you
10 a question.

11 THE WITNESS: Yes, sir.

12
13 EXAMINATION

14 BY MR. NUGENT

15 Q Sir, I'm bothered by your saying you could buy a
16 seat on the Finance Commission by your contributions of
17 such and such. Would you specify specifically what know-
18 ledge that you individually have of this operation?

19 A Mr. Nugent, I would have to say to you that I
20 have no absolute proof of this.

21 Q What individual knowledge do you have, sir?

22 A Well, let's say that I have no specific
23 individual knowledge at this time.

24 Q In other words, you are just taking a broad
25 brush and painting these people without any knowledge. Is

1 that what you're saying?

2 A No, sir, I don't think it is.

3 Q Well then, sir, what knowledge do you have?

4 A Well, I'm not in a debate. I'm merely—

5 Q No, sir. You're trying to satisfy my need for
6 knowledge here right now.

7 A Well, Mr. Nugent, I would do everything I pos-
8 sibly can do, and I can't be specific on it because no one—
9 I have known over the years that many people say they make
10 campaign contributions of much larger sums than what they
11 actually do.

12 Q Who has told you this, sir?

13 A Well, I would say there are many people that have
14 told me.

15 Q Who?

16 A Well, I don't—I don't remember.

17 Q Do you recall any of them?

18 A Well, I say I don't remember.

19 Q I'm asking you, do you recall the names of any
20 of them? Yes, or no?

21 A I don't remember, sir.

22 Q Let me ask you another question. You say that
23 they "buy" these seats by their contributions and then get
24 into a musical chair situation. What individual knowledge
25 do you have of your reference to "musical chair" situation

1 A Well, one of the members that was at one time
2 on there that I frankly do not remember his name—I know
3 where he lives and the area in which he lives—that said
4 many of the members referred to that seat as the musical
5 chair.

6 Q Where does this member live?

7 A In East Texas.

8 Q Where in East Texas?

9 A I don't know the exact little town, but it's a
10 small town.

11 Q Do you remember, sir, any indication in time as
12 to when this man was on the Commission?

13 A It was approximately two years ago.

14 Q Do you know any other identifying remarks or
15 ideas you might have concerning this individual so we
16 might seek him out and try to better understand your
17 statement?

18 A I don't have that right now, Mr. Nugent. I
19 would be glad to try to get it for the Committee if you
20 would allow me the time.

21 Q We'd appreciate that.

22 Let me ask you a question then, sir. Did you
23 ever make any political contributions toward becoming a
24 member of this Finance Commission?

25 A No, sir. I never did.

1 Q Did you ever make any political contributions to
2 anyone who could have put you on that Commission?

3 A No, sir.

4 Q Let me just broaden that one step further.
5 Have you made any political contributions to any
6 public figure in the State of Texas?

7 A Yes, sir.

8 Q To whom have you made these political contribu-
9 tions?

10 A Well, could I— What time are you talking about?
11 Which year, or what?

12 Q Well, let's take the last three years.

13 A Yes, sir. Now then, could I impose upon you to
14 give me specific people that you would like to know if I
15 did it. This would be very helpful to me if you would.

16 Q Yes, sir, you may. I want to know the names of
17 those specific people that you made contributions to?

18 A Well, I'm not saying I'm not answering your
19 question, but I'm saying that—

20 Q So far you've done a very good job of that, sir.

21 A If you would name the person that you want to ask
22 me about, I'll be glad to—

23 Q No, sir. I want to know in the last three years
24 each individual you have made a political contribution to.
25 Have you made it to more than one?

1 A Excuse me. (The witness confers with his
2 counsel.) Mr. Nugent, as you know, I'm under oath here.

3 Q Yes, sir.

4 A And before I could make such a statement I would
5 certainly have to go back and check my records and be sure,
6 and I cannot make it today.

7 Q Would you do that and furnish this Committee
8 that information, sir?

9 A I will be delighted to, sir.

10 Q Let me ask you one further question.

11 What has been your association— Name some of
12 the political figures. What has been your association
13 in the past with Will Wilson?

14 A Well, I know Mr. Will Wilson, and he was at one
15 time my attorney.

16 Q Did you ever have any other association with him?
17 Has he ever been a guest in your home?

18 A Yes, he has been a guest in my home and I have
19 been a guest in his home.

20 Q Has he ever been the recipient of any gifts from
21 you?

22 A Well, it's been so long that he is in office, if
23 I did, I don't remember it. It certainly wasn't of any
24 great amount, if any.

25 Q That's the—I believe we had another attorney

1 general after that, Mr. Waggoner Carr. What was your
2 association with him?

3 A Well, I barely knew Mr. Waggoner Carr until he
4 became closely associated with Mr. John Osorio, and I was
5 never in Mr. Waggoner Carr's office or his home, or he
6 was never in mine until three or four months—no, six or
7 seven months ago.

8 Q What about the present attorney general, Mr.
9 Martin? What has been your association with him?

10 A I know Mr. Martin. I doubt if I have ever made
11 a contribution to him. I cannot remember it. Mr. Martin
12 hunted on my ranch two or three years ago. From that
13 hunting trip he asked me to help his son—I believe it
14 was his son, His name is Jim—that was going to school at
15 the University of Houston, to help him to see if I could
16 help him find a house to buy or rent. I did try. The
17 one I found, he and his wife didn't like, which is pretty
18 much—pretty par for the course. But we did have several
19 conversations about that, but, as I remember now, that's
20 about the extent of that.

21 Q Has he ever been a guest in your home?

22 A I don't believe he has. And I have never been
23 in his home.

24 Q I just have one other question.

25 A moment ago you said there was a tacit under-

standing between you and Mr. Mutscher.

2 A Mr. Mutscher?

3 Q What did you mean by that "tacit understanding."
4 I don't exactly know what you mean and I would kind of
5 like to understand it.

6 A Well, it's several—

7 Q Did you have any overt conversations with him
8 setting up an understanding between you and him?

9 A Any what? What kind of—

10 Q Conversations.

11 A I can't remember any conversations of any par-
12 ticular instance except what I have related here to Mr.
13 McShane.

14 Q What do you mean by this, "tacit understanding"?
15 How did you arrive at it and what were the perimeters of
16 the understanding?

17 A Well, just from the definition of tacit itself.

18 Q Define it for me, sir. Perhaps I don't have
19 your experience and knowledge with words.

20 A Well, Mr. Nugent, you have a much better educa-
21 tion than I do, and I would have to rely upon you getting
22 your definition of it.

23 Q I'm going to get an understanding from you, sir.

24 A Okay.

25 Q Just what did you mean by that?

1 A (Conference with counsel.) Well, I would say,
2 putting it in plain language, that he knew I needed help
3 and I knew that he needed help. I would assume that this
4 would be as good an explanation as I could give of "tacit
5 understanding."

6 Q Did you have any commitment from him that he
7 would pass the legislation if you helped him borrow money
8 or buy stock?

9 A No.

10 Q In other words then you don't know whether there
11 was an actual agreement between him and you or not? Is
12 that what you're saying?

13 A Mr. Nugent, I have to go back to my original
14 statement, that as far as I'm concerned, the only agree-
15 ment there was was more or less a "tacit understanding."

16 Q When I look at Webster, tacit says, "archaic,
17 non-speaking, silent."

18 Just what are you telling me, sir? I gather from
19 what you're saying one way you and he reached an agreement.
20 Then you slipped this word, "tacit" in there which says
21 maybe so, maybe not, maybe he did, maybe I don't.

22 Did you have an agreement or not?

23 A Well, I have answered the question the best I
24 know how.

25 Q In other words, you have answered this question

1 about as well as you understood the agreement?

2 A Yes, sir.

3 MR. NUGENT: I'll get back to that later.

4 CHAIRMAN MURRAY: Go ahead, Mr. McShane.

5
6 EXAMINATION

7 BY MR. McSHANE

8 Q All right, Mr. Sharp. We were talking about
9 your suggestions on the rough draft of the bill.

10 A Yes, sir.

11 Q We had gotten to your second suggestion. What
12 was that suggestion? You recall the first one was chang-
13 ing the regulatory body.

14 A Yes.

15 Q Now, what was the second?

16 A The second was that in the rough draft the added
17 insurance was over and above what the F.D.I.C. insured,
18 and at that time I can't remember whether it was—it was
19 either fifteen or twenty thousand dollars, but there was a
20 change right in that time. I think that the F.D.I.C.
21 changed it from fifteen up to twenty, and my remark on
22 that was that that would be of no aid to the small banks
23 because if they had insurance only over and above the
24 fifteen or twenty thousand dollars that they were still
25 controlled by the F.D.I.C. in the large banks.

1 Q What you're saying is that the bill as first
2 drafted would not get you out from under the coverage of
3 the F.D.I.C.?

4 A That's right.

5 Q Did you give instructions to anyone to change that
6 so that the insurance would be in lieu of the F.D.I.C.?

7 A Well, I don't say that I gave the instructions,
8 but I gave them my recommendation on it.

9 Q And who did you give your recommendation to?

10 A I can't remember but it's my belief that I gave
11 it to John Osorio and probably John Osorio passed it on
12 to Gene Palmer. There is a possibility that I did say it to
13 Mr. Palmer, but I do not remember it.

14 Q You do not recall whether you communicated that
15 directly to Mr. Palmer or not. Is that your testimony?

16 A No, sir, I do not.

17 Q Mr. Sharp, to your knowledge, was your suggestion
18 incorporated in the bill?

19 A Yes, sir.

20 Q Mr. Sharp, let's move from the drafting stage to
21 the legislative processing of the bills. When were you
22 first advised that Governor Smith had opened the call of
23 the session to the introduction of these bills?

24 A I had a call from Mr. Mutscher after the bill had
25 passed the House, and this was the contents of the conver-

1 sation as I remember. He said—and this was in the
2 second session, I believe. There was the first special
3 session and then a second special session, as I remember.

4 As I remember, this was in toward the last of the
5 second special session, and Mr. Mutscher called me and he
6 said, "The Governor has more or less been using the whip
7 on me to get some of this legislation, his legislation
8 through, and I have worked all day and a lot of nights in
9 getting it done, and I felt that maybe he would show his
10 appreciation by letting me get this bill introduced."

11 And he said there was either a groundbreaking
12 or some function here in Austin that the Governor went out
13 to make a speech at and that he went out there and rode
14 back to the capitol here with Mr. Mutscher—I mean Mr.
15 Mutscher rode back with the Governor, and the Governor
16 told him he would allow him to introduce it.

17 He went by the Governor's office and got the
18 written notice and carried it on over to the House and
19 Mr. Tommy Shannon introduced the bill.

20 But I did not have any information on it until
21 after it had been introduced and passed.

22 MR. NUGENT: I have a question.

23 CHAIRMAN MURRAY: Mr. Nugent has a question.

24 A Fine.
25

EXAMINATION

BY MR. NUGENT

Q Is it your understand that Mr. Mutscher told you that he went to the Governor's office, got a written document, personally carried it back to the House opening the call to the bill that you're speaking of and that Mr. Shannon then introduced the bill? Did I understand you correctly?

A Mr. Nugent, I believe the way I said that is this: I said that, as I remember, the Speaker said that he rode back in this car with the Governor from this ceremony, whatever it was that morning, and went over to the Governor's office and that the Governor's office gave him this written approval. Then he took it back to the House and it was introduced. This was his explanation to me. I have no knowledge, personal knowledge of it, other than what he told me.

Q A very extraordinary proceeding, sir, of opening a call. I never heard of one being opened that way and from the record that I have studied this one sure as the devil wasn't either.

A Well, I'm not the author of the conversation.

Q You are repeating it, though?

A Yes, sir.

Q All right.

1 CHAIRMAN MURRAY: Mr. Haynes has a question, Mr.
2 Sharp.

3 A Fine.

4
5 EXAMINATION

6 BY MR. HAYNES

7 Q Mr. Sharp, now, was that in the first called.
8 session of the Sixty-first Legislature that you're relat-
9 ing that this happened?

10 A No, sir. I believe—was it the first or second?

11 Q Well, that's the question I'm asking you, sir.
12 Do you recall whether this was the first or the second
13 called session that this happened?

14 A Well, I'm not sure. (Conference with counsel.)
15 The best way that I can identify it is this. I remember
16 I had been to Europe in the first half of August, and it
17 was immediately after the 16 or 17th of August.

18 Q Possibly I can—excuse me, sir. Possibly I can
19 help you. Was this the bill that eventually the Governor
20 vetoed? Is it the one you're talking about?

21 A Yes, sir.

22 Q Well, sir, it would be the second called session.

23 A Okay. Thank you, sir.

24 Q Okay.

25 MR. SLIDER: Mr. Chairman, while we're there—

1 CHAIRMAN MURRAY: Mr. Slider has a question.

2 A Yes, sir.

3
4 EXAMINATION

5 BY MR. SLIDER

6 Q I would like to ask a clarifying question.

7 Did I understand you correctly, sir, to say that
8 the Speaker went to the Governor's office and physically
9 brought back a proclamation opening the call? Was that it?

10 A Well, as I tried to explain to Mr. Nugent, I
11 merely am repeating what it was my impression that Mr.
12 Mutscher told me, and it was my opinion that this is what
13 he told me. Whether this was the exact way he did it, I
14 cannot answer, because I was merely listening on the
15 telephone.

16 CHAIRMAN MURRAY: Go ahead, Mr. Nugent.

17 EXAMINATION

18 BY MR. NUGENT

19 Q May we assume that everything else you tell us,
20 sir, has as much veracity and actual truth in it as that
21 statement?

22 MR. SUSMAN: I don't think you need to answer
23 that, Mr. Sharp.

24 MR. NUGENT: I think we can take the rest of his
25 statements in light of that.

1 CHAIRMAN MURRAY: Go ahead, Mr. McShane.

2
3 EXAMINATION

4 BY MR. McSHANE

5 Q Mr. Sharp, who was assisting you in Austin by
6 lobbying these bills in the legislature?

7 A Well, Mr. Osorio, John Osorio, was the one that
8 did most of the work as far as I know.

9 Q Are you aware of whether Mr. Waggoner Carr par-
10 ticipated in this effort?

11 A Yes, he helped on it.

12 Q Who reported to you?

13 A Mr. Osorio.

14 Q Did Mr. Carr ever report to you?

15 A No, sir.

16 Q Did Mr. Osorio indicate to you that he was having
17 some difficulty with the legislative passage of the bill?

18 A Yes. He called me one evening after dinner, and
19 he said there were two senators that had either tagged or
20 flagged the bill, which at that time meant absolutely
21 nothing to me other than—and his explanation of it, as I
22 remember, is that if by doing this they would require
23 committee hearings on the bill. And since it was, the
24 session was practically over, this would for all practical
25 purposes kill the bill. And he said those two people were

1 Senator Babe Schwartz of Galveston and Senator Patman.

2 Q How did he propose to resolve this difficulty?
3 Or did he have a proposal for resolving this difficulty?

4 A Well, he said that he thought he could get Mr.
5 Schwartz to withdraw, pull his flag down, or not flag it,
6 or eliminate his objection to it if the bill was amended
7 where the insurance would be allowed to cover the privately
8 owned banks, would be one, and the other is if Mr. Schwartz
9 was made a \$30,000.00 loan.

10 Q He indicated that there were two things that
11 needed to be done to remove Mr. Schwartz's objection. Is
12 that right?

13 A That's right.

14 Q How did he propose to—or did he propose a
15 specific way to obtain this loan for Mr. Schwartz?

16 A He didn't tell me if he did.

17 Q What about the second tag? You mentioned that
18 there were two tags.

19 A Oh, Mr. Patman? Well, all of this is what
20 people tell me and what either Osorio told me or maybe
21 Mr. Mutscher. It was my understanding that Mr. Mutscher
22 and Mr. Patman's father, the Honorable Wright Patman, were
23 good friends. And that Mr. Mutscher called Congressman
24 Patman and told him what his problem was and that Mr.
25 Patman—I'm repeating now what someone else said because I

1 don't know this.

2 Q And this is what Mr. Osorio said?

3 A No, I think it was Mr. Mutscher that told me.
4 He talked to the Congressman about this. The Congressman
5 said, "Well, this was a good bill, and that he would call"—
6 he called his son by the first name—"and tell him that in
7 his opinion it was a good bill."

8 It is my understanding that he withdrew his flag,
9 or tag, whichever the name is on it, but he did not vote
10 for the bill, I understand.

11 Q Mr. Sharp, do you know Representative Bill
12 Heatley?

13 A I met Mr. Heatley. It has been—I did not know
14 him when this legislation was being tossed around.

15 Q You did not know him at this time?

16 A No, sir.

17 Q Therefore you never had occasion to discuss this
18 legislation with him?

19 A No, sir, I never did.

20 Q Do you have knowledge of the circumstances
21 surrounding Mr. Heatley's purchase of NBL stock?

22 A Well, as I remember, John Osorio called me, I
23 believe it was one Monday morning, and said that he would
24 like for Mr. Heatley to be able to buy some NBL stock, and
25 he told me how long that he had known Mr. Heatley; they

1 had been friends for many, many years, and he said—I did
2 not know really who Mr. Heatley was at that time. He told
3 me that he was Chairman of the Appropriations Committee;
4 that he was very influential with some people in the
5 legislature, and it was more or less a personal wish of
6 his that Mr. Heatley buy the stock.

7 Q Did Mr. Osorio discuss with you at this time the
8 method by which the stock would be purchased? That is,
9 the financing of it?

10 A No, sir, he didn't. But that really wasn't
11 necessary. The loan officers of the bank, which John
12 talked to probably more frequently than he did to me, this
13 would be something that they would discuss directly rather
14 than coming through me on the thing as long as he had my
15 permission and consent that Mr. Heatley could buy the
16 stock.

17 Q Did he have your permission, consent in this
18 case?

19 A I certainly had no objection to it.

20 Q Did Mr. Osorio state that there was any connec-
21 tion between his desire to have Mr. Heatley purchase the
22 stock and the passage of the banking bills? House Bills
23 72 and 73?

24 A Mr. McShane, he did not have to spell it out in
25 that language. When he told me that—

1 Q Well, as far as what you actually heard, though,
2 he did not state that?

3 A No, sir, he did not.

4 MR. HALE: Let the witness finish his answer,
5 Mr. Chairman. When he starts making these answers, I
6 think we should let the witness complete his answers
7 before he is interrupted.

8 MR. McSHANE: We will try to do that, Mr. Hale.
9 I'm sorry.

10 Q Okay, Mr. Sharp. Let's go back and make sure
11 we're completely clear on this conversation. Let me ask
12 this question again.

13 Did Mr. Osorio state that there was any connection
14 between his desire for Mr. Heatley to purchase this stock
15 and the fate of the banking legislation?

16 A No.

17 Q Was it in this same conversation that Mr. Osorio
18 indicated that Governor Smith and/or Dr. Baum might be
19 interested in purchasing this stock?

20 A No. It was not.

21 Q Was there a subsequent conversation to that
22 effect?

23 A Well, as I remember, the way Dr. Baum got his
24 stock and the Governor got his stock is this:

25 I had a telephone call from John early in the

1 morning—by early in the morning I mean by 9:00 o'clock in
2 the morning. He told me, he says, "Dr. Baum was up here
3 last night and he and the Governor want to buy some stock
4 in NBL." My answer to that was, "John, anyone that has
5 an insurance company that operates in Texas where the
6 Governor and his best friend wants to buy the stock has
7 got to be a very great compliment, and I'm very excited over
8 it." And he kind of gave a little hacking laugh, and he
9 said, "Well, there's one condition on that." He said, "
10 He wants to borrow enough money from Sharpstown State Bank
11 to pay for it."

12 My remark to that was, "John, even though this is
13 the Governor and his very best friend, his application,
14 when treated for a loan, is going to have to fall in the
15 same category or have the same scrutiny that anyone else
16 has, and if his financial statement will warrant him
17 borrowing that much money, I'm sure that he can get it, but
18 that if he doesn't, he cannot."

19 Q Okay, we're going to stop for just about a minute
20 while Mr. Reynolds changes the tape.

21 CHAIRMAN MURRAY: It is almost 3:30. I'm going
22 to take a ten minute break right now. Be back in ten
23 minutes because we're going to go on.

24 (Brief recess.)

25 CHAIRMAN MURRAY: Mr. McShane, will you continue.

1 MR. McSHANE: All right, Mr. Chairman.

2 Q Mr. Sharp, you recall that we were discussing
3 Governor Smith and Dr. Baum and your conversation with Mr.
4 Osorio in connection with their interest in NBL stock.

5 A Yes.

6 Q Now, I just have one or two more questions about
7 this.

8 Dr. Mr. Osorio state that there was any causal
9 connection between their purchase of NBL stock and the
10 legislative phase of House Bills 72 and 73?

11 A Well, the close of the conversation, as I
12 remember, he kind of laughingly said that if they did buy
13 the stock that it should not hurt the possibilities of
14 this program, if we got it to going.

15 Q Did he say anything else?

16 A As far as I can remember, that's it.

17 MR. McSHANE: Mr. Chairman, I have no further
18 questions of Mr. Sharp at this time.

19 CHAIRMAN MURRAY: Any Committee members have
20 some questions?

21 MR. NUGENT: I have one.

22 CHAIRMAN MURRAY: Mr. Nugent.
23
24
25

EXAMINATION

BY MR. NUGENT

Q Mr. Sharp, I would like to go back to this State Finance Commission you talked about earlier relative to purchasing these seats. I have picked up the names of the men that are on that Commission. Let me ask you this question. My understanding is Mr. Robert A. Mann is a member of that Commission. Do you have any personal knowledge of his buying that seat?

A No, sir.

Q How about Mr. J. H. Baine?

A No, sir.

Q Mr. B. F. Neuhaus?

A No, sir.

Q Mr. Gerald H. Smith?

A No, sir.

Q Mr. Paul D. Lindsey?

A No, sir.

Q How about Bill Ed McLaughlin?

A No, sir.

Q How about C. D. Snow?

A No, sir.

Q How about C. E. Bentley?

A No, sir.

Q How about Rex G. Baker, Jr.?

1 A No, sir.

2 Q Then if you have no knowledge about this, why
3 did you make the statement that these seats are bought,
4 sir?

5 A I tried to make it plain that my remark, Mr.
6 Nugent, that these were general rumors or hearsays, and I
7 apparently did not do a very good job of making that
8 statement clear, but that was my intent.

9 Q Well, if I understand clearly what you're say-
10 ing now is you have no knowledge of that; you were just
11 repeating the rankest kind of rumor somebody had told you?

12 A I doubt that that would be too rank because the
13 thing that is discussed frequently in banking conventions
14 or meetings is that this is the way it's done.

15 Q All right. Who tells you this is the way it's
16 done? Do you remember any names?

17 A Mr. Nugent, I don't remember any of the names.

18 Q Well, can you conveniently remember any group
19 you were in where somebody else might remember the names?

20 A No, sir, I don't at this time.

21 Q Do you have any knowledge of this being true?
22 Personal knowledge of your own.

23 A I have tried to answer this as effectively as I
24 know how, that is, that it is common knowledge.

25 Q I'm not asking for common knowledge, sir. I want

1 to know what you know.

2 A I don't know.

3 Q You don't know anything?

4 A Well, I certainly don't know this.

5 Q Did you ever make any campaign contributions to
6 anybody at anytime relative to one of these Bank Commission
7 seats?

8 A No.

9 Q Do you know anyone that has?

10 A No.

11 Q All right, sir. I'm interested in one other
12 thing. Did you have some tacit understanding with any-
13 body relative to an attorney general's opinion that
14 allowed your bank to purchase additional area there in
15 Sharpstown Center?

16 A No, sir, I did not.

17 Q Did you pay Mr. Jake Jacobsen a fee for getting
18 you an attorney general's opinion?

19 A I paid him a legal fee for making a study on
20 whether or not it was a legal procedure that the steps that
21 we were trying to take—that what we were trying to do was
22 legal, and if it was legal in his opinion, would he and
23 Mr. Joe Long primarily—primarily Mr. Joe Long—would
24 contact the attorney general's office and make known to
25 them their belief of the legality of it and see if the

1 attorney general would confirm his belief and issue such
2 opinion.

3 Q Did you complain about the size of the fee that
4 he charged you for this?

5 A No, sir, I did not.

6 Q You made no comment to him about it?

7 A No, sir.

8 Q All right, sir. I would like to return, if I
9 may, and try to develop the chronological order, as best
10 I can, relative to this idea of having additional insurance
11 coverage for deposits.

12 Who originally conceived the idea in as far as
13 you're concerned, and when did you first begin to think
14 about it?

15 A Well, Mr. Nugent, may I start with your last
16 question first, if I may, and say to you, as I have tried
17 to say to the Committee, that I am very poor at remembering
18 dates, and I cannot get in a date of when I first started
19 on it.

20 Q Well, was it in this century?

21 A Yes.

22 Q Well, we've got that much tied down.

23 A Yes.

24 Q Was it within the last ten years?

25 A Yes.

1 Q Within the last five years?

2 A I think it was.

3 Q All right, sir. Now then, approximately when
4 was it in the last five years, as best you remember?

5 A Well, I would say it certainly was within the
6 last five years.

7 Q All right, sir. Now, who brought this idea to
8 you? Or did you conceive of it yourself?

9 A Well, I probably conceived of it myself.

10 Q And when you conceived of it yourself, who did
11 you first discuss it with after you got the idea?

12 A I don't have any idea of whom I talked to first
13 about it.

14 Q Who did you talk to second?

15 A I don't know.

16 Q Well, who did you first communicate the idea
17 to in any way that you remember?

18 A Well, many times I talked to a lot of people
19 when I have an idea about something, about getting—using
20 them in my expression as "sound-boards," and I certainly
21 don't use specific people. I may talk to five or six
22 people during the day about it, and to say that I remember
23 talking to five or six people in any one day or any one
24 week, I would have to confess to you that my memory is not
25 that good. So—

1 Q Well, in the first two years that you had this
2 idea in your mind, can you remember any name that you
3 talked to?

4 A Oh, probably some of the people that worked for
5 the, either the State Banking Department or the F.D.I.C.
6 I might of talked to any of them.

7 Q Do you remember any of them?

8 A I remember some of them that I talked to about
9 it.

10 Q All right, sir. Who are they?

11 A One of them was Mr. Ted Bristol of the F.D.I.C.

12 Q And when did you talk to him?

13 A Again, I hate to be repetitious on the thing,
14 Mr. Nugent, but I do not remember dates.

15 Q Was it in the sixties or seventies that you
16 talked to him?

17 A I would say very well in the last two years of
18 the sixties, or maybe the seventies, but I would say maybe
19 '68 or '69.

20 Q All right. Do you remember the discussion that
21 you had with him in any particulars?

22 A Well, this was generally his attitude on it, his
23 thinking on it. I believe he said to me that the losses
24 of the F.D.I.C. on their present coverage was very, very
25 low. I may be mistaken by quoting a number, but I will

1 take that chance: that it was probably less than one per
2 cent loss that they had on any bank failures that they
3 had. And I believe that this is generally about what he
4 said.

5 Q Did he approve of the idea, or disapprove of it,
6 generally?

7 A Well, I don't believe he expressed his approval
8 or disapproval on it because I can't remember asking him
9 about it. He merely gave me the information that led me
10 to believe that maybe my thought was not a very radical
11 one.

12 Q All right. Did you talk to any other banking
13 or finance officials of any character concerning this at
14 any time? Around this same time that you talked to Mr.
15 Bristol.

16 A Yes, Mr. Nugent. I talked to someone about it,
17 but I hasten to name him, because he died last week. But
18 it's Mr. Charlie McClaine, who was for a long time Presi-
19 dent of the Sharpstown Bank, and he was the former
20 executive officer of the Oak Forest State Bank, of which we
21 helped organize, a long-time friend who—and I valued his
22 opinion and his knowledge of it. His general appraisal
23 of it was this: that \$100,000.00 on most small banks would
24 be of no appreciable liability for the insuring company
25 because the number of people that would put those

1 large deposits in those small banks would be comparatively
2 small, and it would not increase the liability of the
3 corporation to any great extent from that standpoint.

4 Q Did you ever cause anybody to do any research
5 for the formulation of any ideas relative to actually
6 culminating this into a piece of legislation?

7 A Mr. Nugent, I didn't cause. There was some done,
8 and if I can explain to you to the best of my ability and
9 my opinion of how it was done. It finally got to be a
10 game with some of the employees of the State Banking
11 Department and the F.D.I.C. that Sharpstown State Bank
12 was not getting the same treatment, so to speak, as other
13 banks that they had worked in, and that they took it upon
14 themselves to get together a considerable package for me.
15 And the way it was delivered to me I'll be glad to explain
16 if you would like for me to.

17 Q I would like you to explain the words, "the
18 bank wasn't getting the same treatment as other banks."
19 What do you mean by that?

20 A Well, they thought that there were two standards
21 being used. On some banks, some things that were done in
22 those banks, it was all right for that bank, but for our
23 bank it was not. And this was—I'm merely telling you
24 this is the information that is passed on to them because
25 I didn't know what treatment was given to the others. But

1 They thought enough of it that they spent their time off
2 duty to prepare the information that was delivered to me.

3 Q What did you do with this information? What
4 was the information? a packet of papers or resumes?

5 A Well, considerable information about the number
6 of banks in the State of Texas and about generally what
7 the amount of the deposits of them was that would indicate
8 the size of income that a new corporation would have if
9 it was organized to show some ability to perform if it
10 was done. And this information that was given to me I
11 mailed to Mr. Mutscher, and I think maybe the Committee
12 has here—I hope they do—and it was in my opinion
13 accurate information and something that could be used.

14 Q Did you ever discuss this with Mr. Osorio?

15 A I don't remember ever discussing this with Mr.
16 Osorio?

17 Q Did you ever discuss this with Mr. Palmer?

18 A I don't remember ever discussing it with Mr.
19 Palmer.

20 Q How did Mr. Palmer come to draw this bill?

21 A Well, being somewhat repetitions, I believe that
22 he told Mr. Osorio—Mr. Osorio was in my office and told
23 me that—asked me, I believe, who was going to "shepherd"
24 the bill, I believe was the expression that he used, which
25 I don't know what he meant, really.

1 Q Let me interrupt you there a moment, if I may.
2 We're talking about "shepherding" a bill at this stage.
3 I'm still interested in knowing the time and the people
4 that were involved in the concept of creating the bill.
5 We'll get the other in a minute. Who were you working
6 with to get this idea reduced into a bill form?

7 A This is what I was trying to tell you when you
8 broke in there. I'll try to tell you if you would like
9 for me to.

10 Q Yes, sir.

11 A Okay. Now, then, Mr. Osorio asked me who was
12 going to shepherd the bill and who was going to write the
13 bill? And I said to him that I didn't know what he meant
14 by "shepherding" the bill and I certainly didn't know how
15 to write a bill. He volunteered to me that he knew how
16 to write the bill and that he would take over the respon-
17 sibility and the work of trying to get it through the
18 legislature.

19 Q Did you employ Mr. Osorio to do this?

20 A Mr. Osorio was the President of the insurance
21 company that I owned the controlling interest in, and
22 I believe he was already my employee.

23 Q All right, sir. Was he doing this then as an
24 employee of yours?

25 A Well, I can't tell whether he was doing it as an

1 employee or as a friend, but he was doing it in either one
2 of the capacities.

3 Q Now, this conversation that you're speaking about
4 when you're talking about "shepherding" and writing the
5 bill occurred when?

6 A Well, I'm sure that it was in the last two or
7 three years.

8 Q It would be before '71, would it not?

9 A Yes, sir.

10 Q Would it be, say in '68?

11 A Well, it probably was in '69; sometime in '69.

12 Q Do you have any idea of when in '69? Would it
13 be before the legislature met or after the legislature met?

14 A I'm of the opinion that it was after the legis-
15 lature had met.

16 Q And that would be after January of what year?

17 A '69, I presume.

18 MR. SUSMAN: '69.

19 Q Is that your answer or your counsel's answer?

20 A Well, it is mine.

21 Q All right, sir. Do you recall whether or not it
22 was written in the early part of the year '69, or in the
23 middle of the year?

24 A I really don't know, Mr. Nugent, whether it was
25 or not, but I would say it was certainly written in the

1 first six months; sometime during the first six months
2 of the year.

3 Q In 1969?

4 A Yes, sir.

5 Q All right, sir. Now, I believe you testified
6 earlier that you received a first draft or a "first
7 thoughts" copy of this bill. Is that quoting you correctly?

8 A Yes, sir.

9 Q Where did this come from?

10 A Well, I believe—again, I don't want to be
11 repetitious to you, but, I believe, as I stated before,
12 I don't know whether Mr. Palmer mailed it to me or whether
13 John Osorio brought it to me, but in any event it was on
14 my desk or my secretary's desk.

15 Q Now, what did you do with this first original
16 copy?

17 A I read it.

18 Q And then what did you do with it?

19 A I made two suggestions on it.

20 Q Do you still have that copy?

21 A No. I don't know whether I do or not, Mr.
22 Nugent. For your information, Mr. Nugent, and you, I'm
23 sure don't know this, the SEC has—they have all of our
24 records in their hands, and I really don't know whether
25 we have it or not.

1 Q May I ask you this: If it is in your records,
2 how and where would it be filed?

3 A I can't answer that. I never filed anything in
4 my life like that, sir.

5 Q Well, would it be filed in the insurance company
6 records or the bank records?

7 A I really don't know.

8 Q Your records, or was there any separation?

9 A I said I really didn't know. I never made any
10 of the files myself and I really don't know.

11 Q Who would have filed this for you?

12 A My secretary.

13 Q And what is her name?

14 A Sharon Gillian.

15 Q Sharon Gillian?

16 A Yes.

17 Q Would she know where it was filed?

18 A I'm sure she would.

19 Q All right. Now, at this time had you had any
20 discussion whatsoever with any of the political names that
21 you have used here today?

22 A I didn't understand the question.

23 Q I said, as of the time of your looking at this
24 first draft, or rough draft, had you at that time had any
25 discussion with any of the political names that you have

1 used here today?

2 A Yes, sir.

3 Q Who?

4 A Well, one in particular. Mr. Mutscher.

5 Q All right, sir. How long before you got the
6 first draft did you have a discussion with Mr. Mutscher?

7 A I don't remember.

8 Q On the same day?

9 A It wasn't the same day, but I don't remember
10 how long.

11 Q Well, would this first discussion with Mr.
12 Mutscher relative to a piece of legislation that was being
13 drafted, would it have occurred in the year '68 or '69?

14 A I'm sure it was in '69.

15 Q Would it have occurred in the first month or two
16 of '69 or in the middle of the year, or just when?

17 A I would have to give that the same answer that
18 I did before. I'm sure that it was in the first six months
19 of 1969.

20 Q You had the bill drafted in the first six months
21 and you talked to him in the first six months. Did you
22 do this contemporaneously, about the same time?

23 A I'm pretty sure that we did.

24 Q Now, did he give you any ideas relative to how
25 the bill should be drawn before Mr. Palmer first drew it?

1 A Who is that?

2 Q Mr. Mutscher.

3 A No, sir.

4 Q Well, did he have any definitive conversation
5 with you relative to the content of the bill before the
6 first draft hit your desk?

7 A Not to my memory.

8 Q Then what was it you and Mr. Mutscher discussed
9 prior to the time this first draft hit your desk?

10 A Well, we certainly were not discussing any of
11 the detailed information that was in any bill. We were
12 merely talking about an overall program. Not of what was
13 in certain paragraphs on it. It was merely the program
14 that we were discussing. At no time do I ever remember
15 speaking with Mr. Mutscher other than on a program outlines.

16 Q Well, would you, for my identification, tell me
17 what this program was that you all were outlining?

18 A Well, generally what we have been discussing
19 here this afternoon: that the bill insured the deposits
20 up to \$100,000.00 for each depositor. That was the prin-
21 cipal thing. And that was my part of it. And having
22 \$100,000.00 deposits for small banks in small communities
23 would certainly be very helpful to the economy for that
24 area, of which he was extremely interested in. This was
25 the two things that we considered as a program and our

1 desire.

2 Q Now, then, did you later see a bill other than
3 the first thoughts or first draft copy that you referred
4 to?

5 A I don't believe I ever saw anything other than
6 the first draft and I made the suggestions and it's my
7 belief, as I have stated before this afternoon, to John
8 Osorio, and I believe John Osorio passed on to Mr. Palmer.
9 It's quite possible that I might have said something to
10 Mr. Palmer about it but I do not remember it.

11 Q Do you remember, sir, whether or not the bill
12 compiled in the first session was the bill that was sent
13 you in the very first draft?

14 A I don't know.

15 Q And you don't know whether your suggestions were
16 incorporated in the one that was filed or not?

17 A No, sir.

18 Q Have you ever seen a copy of the bill as it was
19 filed in the regular session?

20 A No, sir.

21 Q You have no knowledge of it?

22 A No, sir.

23 Q We talked about earlier one of these tacit
24 understandings. Would you date for me, sir, when these
25 tacit understandings you referred to first came into

1 existence in your mind?

2 A Well, again, you're bringing back to fixing a
3 date and as I have tried to make very clear, it is very
4 difficult for me to remember specific times on dates.

5 Q Well, you know it might make a lot of difference
6 if this tacit understanding came after the legislature had
7 recessed and everybody had gone home. It sure wouldn't
8 have much bearing, would it?

9 A No, sir, it wouldn't.

10 Q So, the date can be very important, can't it?

11 A It very well could be.

12 Q And should be of interest to everybody in Texas,
13 shouldn't it?

14 A Well—

15 Q So, let's see if we can key your memory some way
16 or another to approach a date on this.

17 A Well,—

18 Q Was it before the bill was introduced in the
19 regular session that you had your first discussion with Mr.
20 Mutscher, or after?

21 A Before.

22 Q Can you give us some indication of how much before?

23 A No, sir, I sure can't.

24 Q Week, month, year?

25 A Well, I'm sure it was less than a year.

1 Q More than a week?

2 A Probably.

3 Q Is that about as close as you can come?

4 A Yes.

5 Q Now, primary to the bill being introduced, how
6 many times had you individually been in the presence of,
7 or seen Mr. Mutscher?

8 A That would be absolutely impossible for me to
9 answer.

10 Q You don't know?

11 A No, sir. But several times.

12 Q You had seen him at least once?

13 A I had seen him several times.

14 Q Can you detail for me where these various
15 meetings occurred?

16 A No, sir, I sure can't.

17 Q Did they occur here in Austin?

18 A No. I visited him one time, I believe, here in
19 Austin.

20 Q Where did you visit him here in Austin?

21 A I went to his office. I didn't know where it
22 was and got Mr. Jesse James to—I knew where Mr. James'
23 office was, and I knew him and I went by and asked him if
24 he would tell me how to get to the Speaker's office. He
25 said, "Well, let me show you," so he walked with me down to

1 the elevator and we went up on the second floor and he
2 showed me where Mr. Mutscher's office was, and his home
3 was.

4 Q Now, when did this occur?

5 A I really don't know, Mr. Nugent. There is some
6 correspondence there in this Committee's hands that will
7 give the date of that, but I don't remember it off hand.

8 Q Did this occur before the bill was introduced
9 in the regular session, or afterward?

10 A Yes, sir. I believe it was before.

11 Q It was before?

12 A Yes, sir.

13 Q What did you discuss in that meeting?

14 A Well, primarily it was just to pay a visit to
15 him and see where he lived and where he worked, was the
16 primary thing.

17 Q No tacit understandings were reached there?

18 A No, sir.

19 Q You didn't smile at each other and understand
20 what each of you were thinking?

21 A Well, I expect we smiled at each other.

22 Q . All right, sir. Now, prior to that time, where
23 did you meet him?

24 A Well, I met him—do you want me to go back over
25 this from the beginning?

1 Q I'd like to know when you first met him, and
2 where, and try to date each of these visits and what
3 occurred chronologically.

4 A Okay. I will do my very best for you.

5 Q We'll appreciate it.

6 A Thank you, sir.

7 The first time I met Mr. Mutscher, Mr. Cecil.
8 Haden gave a cocktail party at one of the local hotels
9 here on the night that President Johnson came to Austin to
10 make the announcement that the Democratic party was out of
11 debt. I met Mr. Mutscher there, through Mr. Haden.

12 Q When was this?

13 A I don't remember the date, but it's very easy to
14 get because that's the date when Mr. Johnson came down to
15 make this announcement. But it was certainly before the
16 legislature met and it was before he was Speaker of the
17 House.

18 Q This was the first time you had ever met the man?

19 A Yes, sir.

20 Q What occurred at that meeting?

21 A Everybody had several—was having drinks and
22 eats, and the things that you normally do at a cocktail
23 party, Mr. Nugent.

24 Q Well, that could be different for two different
25 people, sir. What kind of a tacit understanding are you

1 and I going to reach about what people normally do at a
2 cocktail party?

3 A (Laughter!)

4 Q Now, when was the next time you met him? You
5 smiled at each other too, sir?

6 A Oh, sure. Yes.

7 The next time I met him in Mr. Cecil Haden's
8 office. It was shortly after this cocktail party, I would
9 say maybe somewhere from one week to four weeks would be
10 my guess.

11 Q All right, sir. That is one to four weeks later?

12 A Yes, sir.

13 Q Would this be after the legislature was in
14 session, or before?

15 A I believe this was before the legislature was in
16 session.

17 Q All right, sir. Then this would have been in
18 what? '68?

19 A It probably was. Yes. Yes.

20 Q Where was this Haden meeting?

21 A In Mr. Haden's office. And this meeting, Mr.
22 Nugent, was more or less for me to really meet him where
23 we could really talk to each other and at the meeting was
24 just more or less a get together. And I believe Mr. Haden
25 made the introduction in this way: that he referred—he

1 said, "Gus has a great desire of putting into effect in
2 some manner a broad economic basis for the State of Texas,
3 and you have been talking to me about your \$100,000.00
4 insurance on this," and then he said, "It just occurs to
5 me that the two thoughts might work in the same—work
6 together, and I wanted you all to meet each other." And
7 in substance, that was most of what took place in the
8 first meeting.

9 Q All right, sir. And when was the next meeting?

10 A The next meeting was shortly thereafter, from
11 one to three weeks, I would say.

12 Q And where did it occur?

13 A It occurred in my office on the tenth floor of
14 the Sharpstown State Bank Building where my real estate
15 office was located.

16 Q And what was the substance of that meeting and
17 who was present?

18 A Well, Mr. Mutscher and I were the only two people
19 present. I discussed with him in general what I thought
20 could be done with the bill. He asked some questions—I
21 don't remember specifically the questions he asked, but
22 he made some notations and he said at the end of the meet-
23 ing, he said, "Tommy,"—talking about Mr. Shannon. He
24 said, "Tommy Shannon, if he doesn't know about these matters,
25 he knows who to call to get information on it, and as soon

1 as I—immediately after getting back to Austin, I'm going
2 to talk to him about it and get his opinion on it."

3 Apparently he did and very shortly after that
4 he called me and told me—

5 Q How long after, about?

6 A Oh, I would imagine within a week. He said that
7 Mr. Shannon was very enthusiastic about it, and he thought
8 it had great possibilities.

9 Q All right. Now, was this—at this time had the
10 bill been drafted?

11 A Oh, no. No.

12 Q No bill yet?

13 A No, sir.

14 Q All right. And when was your next meeting or
15 call?

16 A Well, from then on I don't remember the calls or
17 meetings in specific except—the only—we saw each other
18 frequently but—

19 Q Where did you see each other?

20 A Well, probably at— One occasion I remember, a
21 Mr.—a lawyer there in Houston, gave a cocktail party for
22 him.

23 MR. HILL: Mr. Sapp.

24 A Mr. Sapp. And I saw him at Mr. Sapp's cocktail
25 party and visited with him some on this one other occasion.

1 Q Did you discuss anything there?

2 A No, sir. I seldom ever talk business when at
3 a cocktail party, and specifically as most of the people
4 there were invited by Mr. Sapp and they were coming to
5 shake hands with Mr. Mutscher and not with me. And I
6 certainly couldn't monopolize his time, other than saying,
7 in passing.

8 Q When did you next have cause to see him when you
9 could discuss business with him?

10 A Well, I really don't remember personal meetings.
11 We had numerous telephone conversations, and if you would
12 like to have the dates on those, why, my secretary kept a
13 log of all calls that I made or came in, and I'm sure that
14 the Committee has that. If it doesn't, why, it will be
15 very easy to find out.

16 Q All right. Now, can you recall for me, please,
17 sir, when you next saw him—or, let me get back.

18 When, along in this chronological order, was
19 the bill finally drafted? Was it before or after Mr.
20 Sapp's cocktail party?

21 A I really don't remember that in particular
22 there, whether it was before or after.

23 Q When, in the chronological order, did you first
24 discuss with Mr. Mutscher the idea of his acquiring some
25 stock in National Bankers Life?

1 A I believe the information I gave to Mr. McShane
2 a few minutes ago is accurate; that the first time I
3 discussed it with him was at a meeting we had at the Rice
4 Hotel.

5 Q Do you remember when this happened?

6 A No, sir, I don't remember the date.

7 Q Was this before or after the legislature went
8 into session?

9 A I would say, for timing, I would like to give
10 that the same as I gave a few minutes ago on the timing;
11 that it was certainly within the first six months, in my
12 opinion. It might have been a month or so after, but I
13 would say within the first six or seven months of 1969.

14 Q Well, that's what throws me, Mr. Sharp. If you
15 make it the first seven months, the regular session of
16 the legislature is over. If you make it the first six
17 months, the regular session of the legislature is over.

18 A I have tried to be very clear to you, Mr. Nugent,
19 that I cannot remember dates. And asking me these things
20 about dates, I have to give you the same answer because I
21 don't remember.

22 Q Sir, do you know whether or not the bill was
23 ever introduced in the regular session?

24 A I don't know personally, no. It would all be
25 hearsay to me, Mr. Nugent.

1 Q All right, sir. Do you know whether or not the
2 bill ever did get introduced?

3 A Again, it was hearsay to me. Mr. Gus Mutscher
4 told me it was introduced and I'm sure that it was.

5 Q Was it introduced in the regular session, the
6 first called, the second called or the third called
7 session?

8 A I believe the time that I gave on that was
9 sometime after the middle of August, because I remember
10 that because we had made a trip to Europe and it was
11 immediately after that. So, this was the answer that I
12 gave to it a few minutes ago, and I'm sure it is a fact.

13 Q You think it was introduced sometime in August?

14 A Well, I would say it was after the middle of
15 August, I believe, is the testimony that I gave to the
16 thing.

17 Q And that would be in 1969?

18 A Yes, sir.

19 Q Now, when did you first call a stockbroker to
20 help procure some National Bankers Life stock for Mr.
21 Mutscher?

22 A When? Are you asking me the date again?

23 Q As close as you can come.

24 A Yes, sir. Mr. Nugent, these dates are all
25 documented with your Committee, and the only thing I can

1 do is refer you to my records. They're there and you're
2 asking me for the time and all on it. I'll have to give you
3 the same answer because it is not whether I want to or not,
4 but I just cannot remember that.

5 Q The thing that's bothering me, seemingly on some
6 things your memory is clear and on others you can't rem-
7 ember. I wonder why this skip in correlation?

8 A Well, this is, I believe, the way the human mind
9 is made, so I'm told, and some things you have—different
10 people can remember specific things, and, I believe, this
11 is why they try to make pictures of an accident because
12 three or four people can see an accident and they all have
13 different views of it.

14 Q Would that be occurring in this case?

15 A I'm not saying that it would. I'm just saying
16 that—you're asking me why I can't remember, and this I
17 cannot answer, except that I'm probably just an average
18 human being.

19 Q All right. Let me come back, then, if I can.

20 You mentioned earlier some comment about arrang-
21 ing a loan, or Senator Schwartz needing a loan or something.
22 Would you be as definitive about that circumstance as you
23 can, please, sir?

24 A Well, I believe, the testimony that I gave was
25 so far as I can remember is accurate. John Osorio said

1 that Senator Schwartz wanted two things. First, he wanted
2 an amendment in the bill where it would cover, have
3 insurance for privately-held—privately-owned banks as
4 well as banks and building and loan associations. And
5 then he kind of laughed and he said, "Then 'Babe' wants a
6 \$30,000.00 loan." And he said, "Just don't say 'No' to
7 him." And I said, "That's fine, John. I heard you."
8 Words to that effect.

9 Q Did you grant him this \$30,000.00 loan?

10 A No, sir. I didn't make the loan.

11 Q Did your bank make a \$30,000.00 loan to him?

12 A We didn't make the original—our Sharpstown
13 Bank did not make the original loan to him on it.

14 Q Then you did not intercede to get him a
15 \$30,000.00 loan?

16 A I did not intercede. No.

17 Q You had no connection with getting him such a
18 loan?

19 A I was surprised—it's in the Sharpstown State
20 Bank now, but it did not originate in there, I am told.

21 Q How did it get there?

22 A Well, there's probably an agreement between
23 Mr. Osorio—

24 Q Do you know, sir, how it got there?

25 A No, sir, I do not.

1 MR. NUGENT: That's all.

2 CHAIRMAN MURRAY: Any other questions? Mr.
3 Slider?

4
5 EXAMINATION

6 BY MR. SLIDER

7 Q Mr. Sharp, I have one or two questions to try to
8 clear up one or two things.

9 A Fine.

10 Q First, who is Mr. Haden? Maybe you stated and I
11 missed it.

12 A Cecil Haden. His son married my daughter. That's
13 why he is important to me.

14 Q I see.

15 A Yes, sir.

16 Q To the best of your knowledge, who requested
17 the attorney general's opinion, commonly known as, "M-82,"
18 from the attorney general?

19 A Is that the one about the bank?

20 Q Yes, sir.

21 A Well, I hired— or let me back up. The Sharps-
22 town State Bank hired Long and Jacobsen to find out if
23 what we were thinking was legal and if it was legal, make
24 the presentation to the attorney general and see if they
25 would give an opinion on it. I believe this was the way

1 that it was brought about, as far as I remember.

2 Q Did they request the attorney general's opinion,
3 or did they make a request to Mr. Falkner that he request
4 the opinion?

5 A No. They did. Our bank requested it.

6 Q Your bank requested it?

7 A Yes, sir.

8 Q What was the purpose of the opinion?

9 A Well, to find out if the bank could own the
10 building that it was occupying and the property adjoining
11 it.

12 Q Who owns the property?

13 A Sharpstown Realty Company.

14 Q Who owned the controlling interest in the bank?

15 A Sharpstown Realty Company.

16 Q Now, do you know Mr. Tommy Shannon?

17 A Yes, I know Mr. Shannon.

18 Q Did you ever discuss with Mr. Tommy Shannon any
19 of the contents of House Bills 72 or 73?

20 A If I did, I don't remember it. I possibly did
21 but I don't remember it if I did.

22 Q My final question, sir. Have you ever given
23 anything of value to any state official for a political
24 favor?

25 A No, sir.

1 MR. SLIDER: Thank you.

2 CHAIRMAN MURRAY: Mr. Hale, do you have some
3 questions?

4 MR. HALE: Yes, sir, Mr. Chairman.

6 EXAMINATION

7 BY MR. HALE

8 Q Mr. Sharp, I have listened to your testimony
9 here, and if I understand correctly, you met Mr. Mutscher
10 for the first time in the early part of 1969 at a cocktail
11 party here in Austin. Is that correct?

12 A I don't believe I gave the date on it to that
13 extent. I believe the date that I put on it, sir, was
14 that I met him at the night that Mr. Johnson came back to
15 Texas when he was President, to make the announcement that
16 the Democratic party had paid off all of their debts.

17 Q That was at a cocktail party?

18 A Yes, sir.

19 Q And the next time you met him was in Houston at
20 Mr. Haden's office?

21 A Yes, sir. Shortly after that.

22 Q And that was shortly after that?

23 A Yes, sir.

24 Q And the third time was in the Rice Hotel?

25 A No, sir. No, sir, the third time was in my

1 office at the Sharpstown State Bank on the tenth floor
2 there of the bank building.

3 Q Mr. Mutscher testified in a deposition to the
4 SEC on December 31, 1970, to the effect that, "I actually
5 knew Mr. Sharp for a long period of time and pretty
6 generally for several years prior to doing any business
7 with him."

8 A Well, I think he has made that remark to me in
9 this instance, in this manner, rather: that being a
10 developer of real estate, I have had my name in the paper
11 considerably and because we would advertise certain things,
12 or things being done, and I believe his—to me that he
13 had been knowing me a whole lot longer than I knew he had
14 because he had been keeping abreast of my activities.
15 Probably this is what Mr. Mutscher was referring to.

16 Q I see.

17 A I can't answer what Mr. Mutscher said, but this
18 is—he has made this remark to me, and I would imagine it
19 would have some substance—

20 Q Can we fix the date, except for the cocktail
21 party where President Johnson appeared, other than that,
22 your first contact directly with Mr. Mutscher was after
23 January 1, 1969, in Mr. Haden's office in Houston?

24 A Well, I'm hopelessly at your mercy because I
25 don't have my records in front of me, and I don't have that,

1 and I have to—if you don't mind, if I can go back to the
2 order in which we discussed here, is the only way that I
3 know how to answer here. Whether it was the first of '69
4 or not, I can't remember.

5 Q All right. The first time you ever discussed
6 this legislation with Mr. Mutscher was in Mr. Haden's
7 office?

8 A Yes. And this was more or less a "get-acquainted"
9 situation, where, I believe, Mr. Haden, in making the
10 introduction of us, of being known to each other better,
11 is that, I believe, his remarks in substance were that,
12 "Gus is interested in broadening the economy of the State
13 of Texas for the people of the State, and you are interested
14 in the increased—in the deposit insurance—

15 Q My question was, was that the first time? Was
16 that the first time you had discussed this legislation with
17 Mr. Mutscher?

18 A As far as I know, it was.

19 Q At that time. Now, you were hopeful to pass
20 this legislation in the regular session in 1961?

21 A Well, I would say this. It would have been my—
22 it certainly was my desire. Yes, sir.

23 Q But it turned out that it was never introduced in
24 the regular session?

25 A I believe that's accurate.

1 Q Now, Mr. Palmer testified this morning to the
2 effect that either in June or July of 1969, Mr. Osorio
3 asked him to draft these two bills. That would have been
4 after the adjournment of the regular session. Is that
5 consistent with your recollection on that?

6 A I'm sure that that fits in with the bill there.
7 Yes, sir.

8 Q So, the bills were not even drafted until after
9 the regular session was adjourned, according to that?

10 A Apparently that's right. You have better
11 information than I do.

12 Q The only bills that were drafted on this subject
13 matter were those drafted by Mr. Palmer and Mr. Osorio,
14 or jointly through their law firm. Is that correct?

15 A To my knowledge, yes, sir.

16 Q To your knowledge?

17 A Yes, sir.

18 Q You didn't ask anybody else to draft any
19 legislation on this subject?

20 A I didn't. No.

21 Q Why was the long delay in getting the bills
22 drafted? If you were interested in getting something
23 passed in the regular session, why were the bills not
24 drafted until after the regular session adjourned?

25 A Well, I believe—it was my intent to explain that

1 in this meeting, I believe, when I said to—I was asking
2 Mr. Mutscher about this. And he explained to me that it was
3 in his judgment, and he certainly didn't want it to be
4 introduced because "Father Time" had been eating away at
5 the program, or desire to get it done, and he just—it
6 just couldn't be done. Because if—again, trying to
7 repeat—said that they would work hard to get the legisla-
8 tive program in the order it was and if this one bill, new
9 bill, was introduced, why, there would be many legislators
10 who would want to introduce other new bills and it would
11 just cause chaos, and that it just couldn't be done.

12 Q When did Mr. Mutscher tell you this?

13 A Again, I'm going to have to say I don't remember
14 the time. But it was—I'm sure it was when the regular
15 legislature was in session.

16 Q At that time the bill had not even been drafted.

17 A Well, I'm not debating with you, I'm just telling
18 you the best that I remember.

19 Q Were you aware and did you have any conversation
20 with Mr. Mutscher or any other member of the legislature
21 concerning a resolution that was passed in the regular
22 session creating an Interim Banking Study Committee?

23 A Well, I don't know that anyone would be dis-
24 cussing that with me.

25 Q Were you familiar with this committee?

1 A I know there was one, but about it being
2 created, well, if anyone ever discussed it with me, I
3 don't remember, sir.

4 Q You do not recall. Did you appear before that
5 committee?

6 A No, sir.

7 Q At any time?

8 A No, sir.

9 Q Did any member of that committee ever contact
10 you concerning this type of legislation?

11 A Well, I believe, my previous testimony is that
12 I talked to Mr. Shannon on one or two or three occasions.

13 Q Mr. Shannon, of course, was chairman of that
14 Interim Committee.

15 Was it during the time that that Interim
16 Committee was operating that you talked to Mr. Shannon?

17 A Yes, sir, it was.

18 Q Did you have any tacit understanding with Mr.
19 Shannon?

20 A Not that I can remember.

21 Q Let me find out what your understanding of this
22 tacit understanding was? Would this be a correct state-
23 ment of what you think it was; that you would help Mr.
24 Mutscher make some money through the purchase of National
25 Bankers Life stock and in return he would help you pass

1 these bills. Is that your understanding of the under-
2 standing?

3 A I don't think it was ever put in that language,
4 Mr. Hale, that I remember.

5 Q Didn't you sort of put it in that language in
6 part of your testimony one time when you said it was
7 "something that he knew I wanted and I was finding out
8 something he wanted and it was more or less a tacit under-
9 standing or thinking along these lines"?

10 A I think this is accurate, but I don't believe
11 that we used the language that you used beforehand.

12 Q Now, did you have any tacit understanding with
13 the Lieutenant Governor?

14 A No, sir.

15 Q Senator Schwartz?

16 A No, sir.

17 Q Representative Heatley?

18 A No, sir.

19 Q There was a story in "The Dallas News" yesterday
20 morning, I believe it was, allegedly quoting your testi-
21 mony from a deposition taken down in Houston on August the
22 12th, in which, according to the newspaper you made some
23 very strong statements against Governor Barnes. Would you
24 care to repeat those here under oath?

25 A Lieutenant Governor Barnes?

1 Q Yes, sir. Soon to be governor!

2 A (Laughter.) What part of it do you want to tell
3 me.

4 Q I believe you said Mr. Osorio came to your office
5 in the Sharpstown State Bank, and said, "Ben delivered."
6 Did you so testify?

7 A I believe I remember what you're referring to,
8 and I hope you'll pardon me. I'm getting awful tired
9 but I'll do my very best on this.

10 Q I appreciate the lateness of the hour.

11 A Thank you, sir.

12 I believe my testimony was, as near in this
13 content as I can remember it, is that after the bill had
14 passed and before Governor Smith vetoed it, John was in
15 Houston and dropped by my office.

16 Q That's John Osorio?

17 A John Osorio. Yes.

18 Q Thank you.

19 A —dropped by, and said, "Well, Ben delivered his
20 part—delivered like he said he would." And I gave a
21 gesture like this, and I said, "John, let's you and I walk
22 out here in the mall, or the lobby of the bank." I said,
23 "I never know when my office is bugged." Then when we
24 got out in the mall I said to him, "Are you telling me
25 that I'm obligated to Ben for any work that was done on

1 these?" "Oh, no, no, no, no." Then he laughed and he
2 said, "No, no, no. I have taken care of this and there is
3 no obligation on your part."

4 Q Then did Mr. Osorio say anything further in that
5 conversation?

6 A Well, I believe he made a remark that, "You
7 know, Ben is smarter than most of these other politicians.
8 He always has to use money," and said that it was his under-
9 standing that it took from twenty to twenty-five thousand
10 dollars a month to keep his boat afloat, was I believe the
11 expression he used.

12 Q Did you give any money to anybody to be delivered
13 to Mr. Barnes?

14 A No, sir, I did not.

15 Q Do you know if Mr. Osorio gave any money to Mr.
16 Barnes?

17 A No, sir I do not.

18 Q Did Mr. Osorio tell you that he had given any
19 money to Mr. Barnes?

20 A No, sir.

21 Q Did he tell you anybody else allegedly speaking
22 for you, for Sharpstown State Bank or for National Bankers
23 Life Insurance Company had delivered any money to Mr.
24 Barnes?

25 A He did not.

1 Q Do you know of your own knowledge whether any
2 money was ever delivered to Mr. Barnes on this transaction?

3 A No, sir, I do not.

4 Q Do you know of your own knowledge as a matter of
5 fact that none was, do you not?

6 A I do not know.

7 Q You just do not know.

8 Where would money have come from on these bills?
9 It would have had to come from Sharpstown State Bank or
10 National Bankers Life Insurance Company?

11 A I don't know.

12 Q If money had come from either of those two
13 sources in any large amount, you would have known about
14 it in all probability, would you not?

15 A Not necessarily.

16 Q You were chairman of the board?

17 A Yes, sir.

18 Q Of the bank? Or of the insurance company, or
19 both?

20 A Well, it's getting later in the day, and the
21 later it is and the more we have, the poorer—I mean
22 there's always a chance for me to make a mistake on my
23 memory, but as to whether or not it was the only way it
24 could come, if I told you that it would be incorrect,
25 because after all this publicity and all started, I found

1 that there were several things that were done in the
2 insurance company by Mr. Osorio that I—there were large
3 sums of money that I did not know about until certainly
4 way after that had happened. And that also happened in
5 some cases with the bank. So, I could not truthfully
6 testify to you that your statement is true.

7 Q Were you chairman of the board of the bank at
8 that time?

9 A Yes, sir. I sure was.

10 Q Were you chairman of the board of the insurance
11 company?

12 A Yes, sir, I was.

13 Q In both instances?

14 A Yes, sir.

15 Q The implication, though, in your testimony here,
16 and "The Dallas News" obviously played that up to an
17 expert degree, was to the effect that there had been a
18 payoff to Lieutenant Governor Ben Barnes. Did you intend
19 to infer that in your testimony?

20 A (Conference with witness and counsel.) I'm
21 sorry to report to you that I'm not responsible for what
22 the newspapers put there. I do not know. And the testimony
23 that I made to the Securities and Exchange, we would just
24 have to let it stand on its own for whatever it may be.
25 There is a record made of it and I have no way of knowing

1 what the papers have put in it.

2 Q What is your testimony today as to whether or
3 not there was a payoff to Lieutenant Governor Barnes on
4 these bills?

5 A As I say, I have no knowledge of any.

6 Q You have no knowledge. Then if the newspaper
7 quoted you in effect as inferring that there was a payoff,
8 that was an incorrect inference, then, because you simply
9 didn't know, did you?

0 A I would say that a better source of getting that
1 information would be from Mr. Osorio and not me.

2 Q We hope to ask Mr. Osorio a few questions
3 very shortly.

4 A Good.

5 Q All we're trying to do, Mr. Sharp, is, if there
6 is anybody guilty of anything, we want to find it out,
7 but we don't want to be smearing a lot of innocent people
8 here by statements we can't back up with facts.

9 A I would say this: if anyone has any thought
0 that I am pointing my finger at anyone or trying to put a
1 smear on anyone that nothing could be farther from my
2 mind, and all I'm trying to do is that I have been
3 subpoenaed here at this Committee to tell the truth and
4 this I have tried my very best to do.

5 Q I'm sure you have and we appreciate your

1 cooperation in that regard.

2 You testified a moment ago that Will Wilson
3 was at one time your attorney.

4 A Yes, sir.

5 Q How long a period of time did he serve you in
6 the capacity as legal counsel?

7 A Well, I believe, he resigned from my employment
8 in the latter—before he went to Washington, and I
9 believe he went up there in the first of 1969. So he
10 resigned from my employment in late '68.

11 Q Was he a member of the Banking Board at the
12 time Sharpstown State Bank received its charter?

13 A Yes, sir, he was.

14 Q He and Mr. James?

15 A Yes, sir.

16 Q And Mr. Falkner?

17 A Yes, sir.

18 Q Were the three.

19 A Right.

20 Q Was it a unanimous vote for the granting of your
21 charter?

22 A No, sir. I believe the record will show that
23 Mr. Falkner didn't vote for granting a charter to me,
24 either at Sharpstown or Oak Forest. I believe that's what
25 the record is.

1 Q And Mr. James and Mr. Wilson, then, voted for it?

2 A Yes, sir.

3 Q On a two-to-one vote to give you the charter?

4 A Yes, sir. But this was not too unusual, I'm
5 told, that Mr. Falker many times chose not to vote on new
6 chartered banks.

7 Q Did you ever make a political contribution to
8 Mr. Will Wilson's political campaign?

9 A Not to my memory.

10 Q Have you made any political contributions to him
11 since he's been in Washington?

12 A Very definitely, no.

13 Q Have you made any political contributions to
14 any campaign of Mr. Gus Mutscher?

15 A No, sir.

16 Q Have you ever made a political contribution to
17 any campaign by Mr. Ben Barnes?

18 A No, sir.

19 Q Mr. Preston Smith?

20 A No, sir.

21 Q Mr. Crawford Martin?

22 A No, sir.

23 Q Mr. Richard Nixon?

24 A (Laughter!) No, sir.

25 Q Have you made any political contributions?

1 A I beg your pardon?

2 Q Have you ever made any political contributions to
3 any candidate for a statewide office in the State of Texas?

4 A I just don't remember. My records, if I had my
5 records, I would be glad to get them for you, for the
6 Committee at a later time if you desire.

7 Q We would appreciate those.

8 Mr. Nugent asked you that question a minute ago
9 and you said, "Name some names," so I just started asking
10 you some names.

11 A Yes, sir. Well, good.

12 Q How about Alan Shivers?

13 A No, sir.

14 Q How about Price Daniel?

15 A No, sir.

16 Q W. Lee O'Daniel?

17 A (Laughter!) No, sir.

18 Q Didn't even drop a nickel in the barrel?

19 A No, sir. Oh, I'm reminded that I bought some
20 tickets for a barbecue out at Mr. Mutscher's, if that is
21 considered a campaign contribution.

22 Q Well, who knows?

23 (Laughter!)

24 Did you have any conversations with Representa-
25 tive Bill Heatley concerning these bills?

1 A No, sir, I never did.

2 Q You testified a little earlier on counsel's
3 questions here that Mr. Osorio called you and advised you
4 Mr. Heatley wanted to buy some stock—

5 A Yes, sir.

6 Q —in National Bankers Life. Is that correct?

7 A That's correct.

8 Q And he also recommended Mr. Heatley very highly?

9 A He did.

10 Q He made the statement that there wasn't any
11 mention of the bills, he didn't have to do that; that you
12 knew what he meant.

13 A Well, I don't know that it was exactly in that
14 language but it was in that substance. Yes.

15 Q That was another one of the tacit understandings?

16 A It probably was.

17 Q Was it your understanding of that statement that
18 Mr. Osorio was telling you, "Look, here's a way we can
19 buy off Mr. Heatley"?

20 A No. Mr. Osorio would never make such statement.

21 Q No, but I mean is that what he meant? You said
22 you knew what he meant.

23 A I certainly didn't mean that he meant that.

24 Q What did he mean?

25 A Well, he just meant that Mr. Heatley was a very

1 good friend of his and that he thought that Mr. Heatley
2 would help him in anyway that was reasonable.

3 Q He just wanted to sort of be neighborly with
4 his good friend, Mr. Heatley. Is that your feeling about
5 it?

6 A Well, he and Mr. Heatley, it's my understanding,
7 have been friends for many, many years, and I had never met
8 Mr. Heatley, ever, at that time. I met him after the
9 legislature was over and after Mr. Osorio was no longer
10 with the company, I met Mr. Heatley. But up until this
11 time I had never met Mr. Heatley..

12 Q All right. What position did Mr. Osorio hold
13 with the company at the time these events were taking
14 place during the summer of 1969?

15 A He was president of National Bankers Life.

16 Q When did he go out as president?

17 A I don't remember the date, sir.

18 Q Approximately when?

19 A Well—

20 Q The Governor vetoed the bills in August. August
21 29, 1969. Was it after that?

22 A I'm sure that it was after that.

23 Q Did he get fired because the governor vetoed the
24 bill?

25 A No, sir, he did not.

1 Q Was there a tacit understanding with Osorio and
2 Governor Smith?

3 A I don't have any idea.

4 Q Do you think there was any connection between
5 Governor Smith buying stock in National Bankers Life and
6 his veto of those bills?

7 A I wouldn't think so.

8 Q Did you talk to the Governor about those bills
9 at any time?

10 A No, sir.

11 Q Did anyone representing you talk to the Governor
12 about those bills, to your knowledge?

13 A Well, unless you would classify Mr. Osorio as
14 representing me. And Mr. Osorio was president of the
15 National Bankers Life.

16 Q Did he talk to Governor Smith about the bills?

17 A The only way that I know if he talked to him—
18 and he never did specify that he talked to the Governor
19 about it. I had a telephone call from Mr. Osorio one
20 night before the bill was vetoed and he said that he and
21 Dr. Baum and—I assume Dr. Baum and the Governor and the
22 Osorios and their wives were at some place here in Austin
23 having dinner and he was laughing about it. We were dis-
24 cussing something. I don't know what it was other than
25 this and he said, "I was having dinner out here and I wish

1 I had that bill out here tonight. I think I could get the
2 Governor to sign it." And I just said, "Well, fine: It's
3 too bad you didn't have it."

4 Q This was Mr. Osorio relating this to you?

5 A Yes, sir.

6 Q You knew that Governor Smith did buy some stock
7 in National Bankers Life?

8 A Yes, sir, I do.

9 Q And that Dr. Baum bought some stock in National
10 Bankers Life?

11 A Yes, sir.

12 Q Did Dr. Baum **ever** talk to you about these bills?

13 A No, sir, he didn't.

14 Q Did you talk to anyone purportedly representing
15 the Governor about him opening up the call on the second
16 called session so that the bills could be introduced?

17 A No, sir.

18 Q Do you know if anyone talked to him about that?

19 A I don't know.

20 Q You don't. Did Mr. Osorio ever relate to you
21 any conversation with the Governor about that?

22 A No, sir.

23 Q Did Mr. Osorio have anything to do with the
24 Governor and Dr. Baum buying stock in National Bankers
25 Life Insurance Company?

1 A As far as I know, I don't. I don't know.

2 Q You just do not know?

3 A No, sir.

4 Q In his deposition on December 31, I believe—
5 December 31, 1970, before the SEC, Mr. Mutscher was asked
6 this question. It says:

7 "Have you ever been informed by anyone in
8 either your support or Mr. Shannon's support or the
9 support of any member of the legislature or any
10 members of your staff or any members of the
11 executive branch of state government have been
12 offered any compensation for their support of
13 these bills."

14 His answer: "No, and definitely no."

15 Question: "By anyone?"

16 Answer: "By anyone."

17 Apparently Mr. Mutscher's understanding of your
18 tacit understanding with him differs slightly from your
19 understanding of that tacit understanding, doesn't it?

20 A It very well could be.

21 Q Do you have any information, Mr. Sharp, through
22 any of your connections that would constitute competent
23 and legal evidence in any court to justify an assertion
24 that any elected state official in the State of Texas has
25 been paid off?

1 A (Conference with counsel.) My counsel—

2 Q I'm sorry. Do you need to take a short break,
3 counsel?

4 MR. HILL: Answer that question.

5 MR. SUSMAN: I think you're asking for a legal
6 conclusion that he can't answer.

7 MR. HALE: Probably so. Probably so. He seems
8 to be very weary.

9 MR. HILL: Are you getting tired?

10 THE WITNESS: I am dead tired.

11 MR. McSHANE: Is he able to answer some more
12 questions?

13 THE WITNESS: I'll do my very best.

14 MR. HALE: All right.

15 Q You have related here today during your testimony
16 a number of conversations with different officials, many of
17 which conversations took place over the telephone. Do you
18 make recordings of your telephone conversations, or did
19 you during this period of time?

20 A No, sir.

21 Q Do you have any tape recordings of any of these
22 conversations or other—

23 A No, sir.

24 Q —any kind of mechanical reproduction of these
25 conversations?

1 A No, sir.

2 Q Do you record mechanically, by tape or otherwise,
3 any of the conversations that take place in your office?
4 Is your office bugged in other words, by you? Or was it
5 during this period of time?

6 A My office wasn't. No.

7 Q Sir?

8 A No, my office wasn't bugged. Not by me.

9 Q For instance, the conversations with Mr. Mutscher,
10 for instance up there where you had a tacit understanding.
11 Do you have a tape recording or a mechanical reproduction
12 of your conversation on that?

13 A No.

14 Q Did anyone else make any mechanical reproductions
15 of those conversations at your request and at your instiga-
16 tion?

17 A No..

18 Q Was there any bugging or mechanical reproductions
19 being made, recordings being made elsewhere in the Sharps-
20 town Bank Building at your instigation?

21 MR. SUSMAN: Go ahead and answer.

22 A Yes.

23 Q Do you have tape recordings of those?

24 A No.

Q Where are those tape recordings?

1 A In the FBI's office.

2 Q Do any of those tape recordings involve any of
3 the elected state officials whose names have been brought
4 to bear here today?

5 A No.

6 Q Do any of those tape recordings pertain to the
7 passage or defeat and veto of House Bill 72 or House Bill
8 73 of the second called session?

9 A No.

10 MR. HALE: That's all the questions I have.

11 CHAIRMAN MURRAY: Mr. Haynes has a couple of
12 questions.

13
14 EXAMINATION

15 BY MR. HAYNES

16 Q Two very short questions, Mr. Sharp, I know
17 you're getting very weary.

18 A Thank you.

19 Q You made a reference a while ago to the fact
20 when you and Mr. Osorio were visiting in your office and
21 you suggested that you walk out of your office before you
22 continued your conversation about Ben.

23 A Yes.

24 Q Lieutenant Governor Ben Barnes.

25 A Yes.

1 Q When you got out there in the office and he made
2 the statement that Ben had been taken care of, or words to
3 that effect.

4 A No. I believe this is, as well as I can remember,
5 this is what I said. I said, "Are you telling me that I'm
6 indebted to someone on this?" And he said, "Oh, no, no,
7 no, you don't owe anybody anything."

8 Q That he had taken care of it, I believe you
9 said, or words to that effect.

10 A Yes. Right.

11 Q Now, in your mind, what did he mean by that
12 phrase?

13 A I don't know. And I didn't ask him.

14 Q All right, sir. Now, what sum, if any, did you
15 pay Mr. Osorio and his law firm for drafting and lobbying
16 for the passage of these two bills?

17 A Well, as I can remember, there was no specific
18 amount put in there for the drafting of it. Their law
19 firm represented the insurance company and it's quite
20 possible—and I'm not saying that this is the way it
21 happened, but it is quite possible that on their bill
22 per diem to the insurance company, it could have been in
23 on that bill, but I'm not sure that it did or did not. But
24 it wasn't—there was nothing other than on a per diem
25 basis as far as I can remember.

1 Q I see. You just didn't pay them a lump sum to
2 do this particular job?

3 A Oh, no.

4 Q They were on a retainer. His attorneys were on
5 a retainer fee for you and this covered—and whatever they
6 did in relation to these bills, this retainer covered it?

7 A It was more or less—it was on a per diem basis
8 on their working basis, and there was certainly no lump
9 sum in there.

10 MR. HAYNES: Thank you, sir.

11 CHAIRMAN MURRAY: Any other questions of Mr.
12 Sharp? Mr. Nugent, I believe, has one.

13
14 EXAMINATION

15 BY MR. NUGENT

16 Q Mr. Sharp?

17 A Yes, sir.

18 Q I want one understanding with you, sir. We
19 don't have a tacit understanding of any character.

20 A Yes.

21 CHAIRMAN MURRAY: Any other questions?

22 Mr. Hale?
23
24
25

EXAMINATIONBY MR. HALE

Q Did Will Wilson finance some real estate through a loan from the Sharpstown State Bank?

A Well, I would have to go back to my records on that. You mean while he was my general counsel?

Q At any time.

A Well, if you are asking me if he did since 19—since he has not been in my employment, the answer is, "No." While he was my general counsel there is quite—I'm not saying that he did or did not, but I have no memory of it.

Q Does he still own some stock in National Bankers Life Insurance Company?

A I don't know. I haven't seen that stock report in quite some time. I don't know that I ever did see it.

Q Was Waggoner Carr ever employed by your company?

A Not directly, sir.

Q Only through his connection with Osorio?

A Yes, sir.

Q Did you ever have any dealings directly with Waggoner Carr?

A Not as far as I know.

Q Did you ever make a contribution to his campaign?

A No, sir.

1 Q Curtis Graves?

2 A (Laughing.) No, sir.

3 MR. HALE: No further questions.

4 MR. NUGENT: I have one.

5 CHAIRMAN MURRAY: Mr. Nugent.

6
7 EXAMINATION

8 BY MR. NUGENT

9 Q On or about April 27th, 1964, did your bank
10 originate a line of credit for Mr. Wilson in the amount of
11 about \$50,000.00?

12 A '64? Mr. Nugent, I certainly don't remember
13 in 1964, and my bank.

14 Q Maybe this would help you, sir. Could it have
15 been secured by four tracts of land in the Isaac Wade
16 Survey in the Dundridge Addition?

17 A I really don't know, sir.

18 Q Would you know whether or not advances against
19 that property were made until the line of credit reached
20 a high of \$200,000.00 in 1967?

21 A No, sir, I wouldn't know.

22 Q Do you know whether or not \$100,000.00 of the
23 line was sold in the form of participation to either Oak
24 Forest Bank or the Fidelity Bank and Trust Company, both
25 in Houston?

A No, sir, I don't.

Q Do you know whether or not a loan of \$30,000.00 was made August 10th, 1970, due in one year at the rate of eight and one-half per cent to Mr. Wilson?

A No. I like the interest rate, though.

Q Do you know whether or not on January 8th, 1971, the entire note was purchased by the Dallas Bank and Trust Company of Dallas?

A No, sir, I don't know.

Q Do you know whether or not your bank further loaned money to Wilson, Osbourn and Riddings of Houston, starting out with a loan of \$17,100.00 on September 6, 1968, due January 1st, 1969, at the rate of seven and a half per cent?

A No, I don't know.

Q If the records reflected that, would you—

A Well, if the bank records reflect it, it speaks for itself, Mr. Nugent.

Q Did you ever make a campaign contribution to Ralph Yarborough?

A No, sir. Not as far as I can remember.

Q All right. That's the last one I can think of.

You will furnish us a list from your records, sir, of any political contributions you have made, I believe?

1 A If I still have them, I will.

2 MR. NUGENT: That's all.

3 MR. McSHANE: I have no further questions.

4 CHAIRMAN MURRAY: Mr. Sharp, would you know
5 whether Mr. Osorio is in Austin at this time?

6 A I have no idea about Mr. Osorio's whereabouts.

7 CHAIRMAN MURRAY: He is not employed by you in
8 any way at this time?

9 A No, sir, I haven't talked to Mr. Osorio in quite
10 some time.

11 CHAIRMAN MURRAY: Any further questions?

12 If not, Mr. Sharp, I understand you need to be
13 in Dallas for some depositions or something tomorrow. We
14 would like for the subpoena that has been served on you
15 to continue in effect in the event later on in our
16 hearings we have need to ask you further questions.

17 At this time I know of no occasion when we will
18 need to call you back, but we would like to have an under-
19 standing that you're not released from the subpoena and
20 that if we find some reason that we need to call you back,
21 we'll get with your counsel and arrange some convenient
22 time.

23 THE WITNESS: I'll be glad to cooperate with
24 you in any way I possibly can, sir.

25 CHAIRMAN MURRAY: All right. Thank you very

much.

(The witness, Mr. Frank W. Sharp, was excused.)

CHAIRMAN MURRAY: The Committee will stand—
is 9:30 in the morning all right?

The Committee will stand recessed until 9:30
tomorrow morning.

(WHEREUPON, at 5:15 p.m., the hearing was recessed
until August 19, 1971, at 9:30 a.m.)

1 THURSDAY, AUGUST 19, 1971

2 MORNING SESSION

3 (The hearing was reconvened, pursuant to the
4 afternoon recess on August 18, 1971.)

5
6 CHAIRMAN MURRAY: The House Investigating
7 Committee will come to order.

8 Mr. McShane, if you will, call your first
9 witness.

10 MR. McSHANE: Our first witness this morning
11 will be Mr. Sam Kimberlin, Jr.

12 CHAIRMAN MURRAY: Mr. Kimberlin, will you please
13 stand and be sworn.

14
15 MR. SAM KIMBERLIN, JR.
16 was called as a witness and, after having been first duly
17 sworn, testified as follows:

18 EXAMINATION

19 BY MR. McSHANE

20 Q Will you state your name for the record, please,
21 sir?

22 A Sam Kimberlin, Jr.

23 Q And what is your address?

24 A 1001 Vaughn Building is the business address.

25 Q And what is your occupation, sir?

1 A Executive Vice President of the Texas Bankers
2 Association.

3 Q How long have you held that position?

4 A Since 1964, September of 1964.

5 Q And are you also an attorney?

6 A Yes, sir.

7 Q Mr. Kimberlin, when were you first introduced
8 to the concept of insuring bank deposits at the state
9 level?

0 A Well, I suppose a concept was way back when I
1 was with the Banking Department. There was some discussion
2 of the old Guaranty Fund Insurance, but this concept that
3 was contained in the bills that were passed, I was first
4 introduced to those, I think, in the first called session
5 of the—what would that be, the Sixty-first?

6 Q The Sixty-first.

7 A The Sixty-first Legislature.

8 Q You would be referring to House Bills 52 and 53?

9 A I believe those were the numbers. Yes, sir.

0 Q And how did these bills first come to your
1 attention?

2 A I suppose through the Legislative Service. We
3 subscribe to the Legislative Service and they send the
4 bills out as soon as they are introduced, the same day, if
5 possible.

1 Q Did either you or your Association take a posi-
2 tion on these bills at this time?

3 A We took no position. The Association didn't, and,
4 of course, the position I take is dictated by the appro-
5 priate committees and the Board of Directors of the
6 Association.

7 No position was taken on the bills, in fact,
8 until after the close of the second called session.

9 Q During the second called session, were you con-
10 tacted by any members of the House of Representatives con-
11 cerning House Bills 72 and 73?

12 A Yes, sir, I believe I was.

13 Q Which members were those?

14 A I believe that the day of the hearing on these
15 two bills before the House Banking Committee I was con-
16 tacted by the chairman of the Committee and by another
17 member of the Committee, Mr. Patterson, to inform—

18 Q Who was the chairman of the Committee?

19 A Mr. Neal Sullivan, I believe.

20 —to inform me that the bills were set for
21 hearing.

22 Q Was anything else contained in either of these
23 conversations other than simply to notify you that the
24 bills were being set for hearing?

25 A Well, I'm not sure. It's been a long time. I

1 think that, perhaps, they asked what my view was on the
2 bills. That would be the logical way that that sort of a
3 conversation would proceed.

4 Q At this time, did you give them any view on the
5 bills?

6 A I don't believe that I did.

7 Q Were you also contacted by Representative
8 Shannon at any time during the session concerning these
9 bills?

10 A I'm not certain whether I was. I did talk to
11 Mr. Shannon. I'm not certain whether it was at the first
12 called session or the second called session. He did
13 inform me that he had introduced the bills. It seems to
14 me it was shortly after the introduction of the first called
15 session, and explained their purpose.

16 Q Would it again be your testimony that you took
17 no position on the bills with Mr. Shannon when he contacted
18 you?

19 A I did not intend to, and I don't believe I did.

20 Q All right, sir. At what point during or after
21 the legislative process of these bills did your Associa-
22 tion take a position?

23 A The Administrative Counsel of the Association,
24 which is our Board of Directors, took a position on Septem-
25 ber the 15th, I believe—I'll have to check the date. I

1 believe it was Monday. If that is a Monday, it was
2 September 15th.

3 Q And what was that position?

4 A The position was to request the Governor to
5 veto the bills and suggest that they needed further study.

6 Q And what were the reasons given by your
7 Association for that position?

8 A Well, the reasons were later reduced to writing
9 and contained in a letter, and I believe that I have
10 given you a copy of the letter.

11 Q Is that the letter of September 18th, 1969—

12 A Yes, sir.

13 Q —from Mr. Deryll Henry?

14 A Yes, sir. It's over the signature of the
15 President of the Association, Mr. Deryll Henry.

16 Q Could you just very briefly restate those
17 reasons?

18 A Yes, sir. I'll be glad to.

19 Well, we set out first the history of private
20 insurance of bank deposits in Texas between the years 1904
21 and 1926 when state banks were required by law to be
22 members of a so-called Guaranty Bond Fund, which was a
23 form of mutual insurance, mutual assessment type of
24 insurance. And the old Guaranty Fund program proved very
25 unsuccessful. The banks that were in it were assessed

1 increasingly large amounts, larger and larger amounts,
2 and they were authorized by legislation in the early
3 twenties, I believe, to withdraw. Then immediately
4 thereupon, most of the members of the Guaranty Fund did
5 withdraw and the whole program then collapsed and I think
6 the Act was repealed in 1926 or 1927. So that experience,
7 which had been a negative experience, we felt, should be
8 given more consideration on conjunction with the concept
9 of the bills that were under consideration.

10 We agreed with a statement of the Finance
11 Commission, I believe, in a letter over Mr. Falkner's—
12 J. M. Falkner's signature, that the two bills might lead
13 to a proliferation of small and perhaps weak deposit
14 protection in corporations, serving limited geographical
15 areas and that this might not be in the public interest.

16 The Finance Commission also pointed out that
17 the legislation would be discriminatory towards the very
18 small banks in the state, banks which have less than
19 \$200,000.00 in capital.

20 We were concerned about the money market con-
21 ditions at that time. It was an extremely tight-money
22 period. Funds were very scarce. We felt that the scarcity
23 of funds to meet a very strong loan demand might create a
24 competitive situation which would force banks and savings
25 and loan associations to very hurriedly obtain private

1 insurance of deposits as authorized by this bill in order
2 to maintain a competitive position and continue attracting
3 deposits and savings accounts, which they needed badly,
4 and that was the principal factor, or reason, that we
5 felt that this might lead to a very quick proliferation
6 of small and, perhaps, weak deposit protection corpora-
7 tions.

8 We felt that if this did occur, the public
9 might be misled as to the quality and the strength of the
10 insurance of their deposits.

11 We pointed out that there was a House Study
12 Committee created in the regular session of this Legislature,
13 and that that Committee had not had sufficient time to
14 hear testimony on this concept.

15 Well, we pointed out that the legislation was
16 vague regarding the regulation and supervision of non-
17 profit deposit protection corporations in that it estab-
18 lished an examination force under the State Banking Board,
19 and the State Banking Board, under existing law, does not
20 have any continuing responsibilities, but instead only
21 meets periodically, only for the purpose of, or principally
22 for the purpose of, considering bank charter applications.

23 The Board has no examination force, no examiners
24 that work for it, and no supervisory responsibilities under
25 present law, and I believe that House Bills 72 and 73, or

1 73 and 74, placed the responsibility for supervision and
2 examination in the State Banking Board and in the non-
3 existent force of examiners.

4 We pointed out that the Legislature had not
5 appropriated any funds to finance the establishment of a
6 new examination staff to operate under the supervision of
7 the Board, and that the Board had no funds from other
8 sources at its disposal which could be used for that
9 purpose.

10 In addition, we made the point that the Legisla-
11 tion could be discriminatory between state chartered and
12 national banks in that in our view the private insurance
13 authorized under House Bill 73 was not necessarily
14 coverage, insurance coverage in addition to that provided
15 by the Federal Deposit Insurance Corporation. We pointed
16 to the provision in the bill that provided that there shall
17 be no insurance of deposits to the extent that the same
18 are insured by the F.D.I.C., and if there was no F.D.I.C.
19 insurance, then that would be from zero on up, the way we
20 read the bill.

21 Then, in view of that, it would be possible
22 to withdraw from the F.D.I.C. under federal law—for a
23 state bank to do so—and cancel its membership in the
24 Federal Deposit Insurance Corporation, and carry only the
25 private deposit insurance.

1 Federal law does require that national banks be
2 members of the F.D.I.C. They have no alternative but to
3 be members. It's optional for state banks.

4 So the state banks which were not members of the
5 Federal Reserve System, and as a matter of fact, the
6 Federal Reserve Act requires that any member also be
7 insured by the F.D.I.C. But there are about 500 or 550
8 state banks which are not members of the Federal Reserve
9 System, which theoretically could cancel their F.D.I.C.
10 membership, and if they did, and carried only the private
11 insurance of deposits, they would be under no further
12 restraint or limitation as to the interest that they
13 could pay on savings accounts or on certificates of
14 deposit. And that would give such banks a clear competi-
15 tive edge or advantage over national banks and over
16 F.D.I.C. member state banks. We felt the same situation
17 could occur in connection with federally chartered and
18 state chartered savings and loan associations.

19 And the last point that was made was a comment
20 from the Banking Commissioner, Mr. Falkner, indicating
21 that there had been—the losses in state banks that had
22 failed—the losses to depositors had been nil, leading to
23 the point that there was not any real pressing current
24 need for the type of legislation.

25 Q All right, sir. In addition to this letter that

1 you have just summarized, did your Association make any
2 further attempt to cause the bills to be vetoed?

3 A Mr. Henry, I believe, as indicated by the letter,
4 called the Governor, and the Governor, I think, suggested
5 that we send him a letter. In addition, I was in contact
6 with Mr. Gallaway Calhoun who was the attorney for the
7 Governor's office at that point of time.

8 Q And what was the substance of your conversation
9 with Mr. Gallaway Calhoun?

10 A The same points that are in the letter.

11 Q Outlining the points that you just summarized?

12 A Right.

13 Q All right, sir. Do you have personal knowledge
14 of any bribe or favor accepted by any public official in
15 connection with the introduction and passage of House
16 Bills 72 and 73?

17 A No, sir.

18 MR. McSHANE: Mr. Chairman, I pass this witness
19 at this time.

20 CHAIRMAN MURRAY: Any questions from members of
21 the Committee?

22 MR. NUGENT: Yes, I have a question.
23
24
25

EXAMINATION

BY MR. NUGENT

Q I have some difficulty understanding the difference between the viewpoints that I hear expressed relative to what this bill will actually do.

A Yes, sir.

Q Whether it is in addition to, or whether it is in lieu thereof. If I understand your viewpoint correctly, it is that the bill would provide coverage that would allow it to be in lieu of the F.D.I.C.

A That's our viewpoint on banks that are not either national banks or members of the Federal Reserve System.

Q With that being your viewpoint, how do you walk around the emergency clause and the caption of this bill?

A Well, I don't believe the caption—I looked at the caption, and I don't believe it says "excess coverage."

Q Well—

A And really, we looked at the caption and the body of the bill. If I understand the rules that the courts follow in legislative construction, they will look at the emergency clause if the bill is not otherwise clear, but that is secondary.

Q Well, don't you think they also look at the

1 caption?

2 A Well, I think they look at the caption and the
3 body of the bill. Yes, sir.

4 Q All right, sir. In view of what the caption
5 says, the body of the bill and the emergency clause, how
6 do you substantiate the viewpoint that you have?

7 A Well, the membership in the Federal Deposit
8 Insurance Corporation is governed by federal law. I
9 think it would be possible for the State Legislature, any
10 State Legislature, to enact a provision that would
11 require a state bank to have Federal Deposit Insurance
12 Corporation coverage before it opened its doors for
13 business, or a provision to prohibit a state bank that
14 has such coverage from withdrawing from the F.D.I.C. But
15 I don't see either of those provisions in this bill.

16 Q Is it your position, then, that reasonable
17 legal minds can differ on this?

18 A Oh, yes. Reasonably legal minds can differ on
19 almost anything.

20 Q Well, would it be reasonable to say that com-
21 petent legal minds could differ on the interpretation of
22 this bill?

23 A I suppose so. That is our interpretation of it:
24 that it would permit insurance coverage in a situation
25 where the bank was not a member of the F.D.I.C.

1 Q You know, it is hard for me to conceive of two
2 competent attorneys having different viewpoints of the
3 same words. I think that is what this Committee is running
4 into.

5 A Yes. It may be appropriate that you're sitting
6 where the Supreme Court Justices formerly sat and heard
7 many of the same types of arguments.

8 Q Sam, we don't get paid as well as they do.

9 A Yes, sir.

10 Q Maybe we just don't have their ability.

11 MR. NUGENT: I have no further questions.

12 CHAIRMAN MURRAY: Any other questions?

13 MR. HALE: I'd like to.

14 CHAIRMAN MURRAY: Mr. Hale?

15
16 EXAMINATION

17 BY MR. HALE

18 Q First, let me say I'm not sure that comparison
19 with the Supreme Court is necessarily complimentary of
20 this Committee.

21 I was intrigued by your remarks a minute ago
22 about how many banks are not members of the Federal
23 Reserve System. Would you repeat that figure?

24 A About 550 is the figure that is in the letter.
25 I think it is 530 to 550.

1 Q Banks in Texas—

2 A Yes, sir.

3 Q —not members of the Federal Reserve System?

4 A Yes, sir. These are state chartered banks. The
5 great majority are.

6 Q Well, I thought that they were all members of the
7 Federal Reserve System.

8 A The national bank is required by federal law to
9 be a member of the Federal Reserve System and also a mem-
10 ber of the Federal Deposit Insurance Corporation. State
11 chartered banks are not required to be either, a member of
12 either system.

13 Now in Texas, the some 600 state banks, I think,
14 are all insured by the Federal Deposit Insurance Corpora-
15 tion, with perhaps one exception. But you see, membership
16 in the Federal Reserve System is a separate thing entirely.
17 I don't believe I answered your question entirely, and it's
18 advantageous, as I understand it, for state chartered
19 banks that are located in the larger cities to be members,
20 but there is no particular advantage to be a member of the
21 Federal Reserve System if you are not in that situation.

22 Q How would a little—how would a state bank
23 that's not a member of the Federal Reserve System clear
24 all of its vouchers and checks and so forth with out-of-
25 state banks, if they don't clear it through the Federal

1 Reserve System?

2 A Well, they would clear it through a correspondent
3 bank in a major city that is a member of the Federal
4 Reserve System.

5 Q They just sort of ride piggy back then on some-
6 body that's a member of the Federal Reserve System?

7 A Yes, I suppose you could characterize it that
8 way.

9 Q Why would a bank belong to the Federal Reserve
10 System, and vice versa, why would a bank not belong to
11 the Federal Reserve System? Why that difference?

12 A Oh, I suppose there would be several reasons.
13 It is another layer of supervision, for one thing. The
14 state chartered banks that are members of the Federal
15 Deposit Insurance Corporation are subject to examination
16 by the State Banking Department and also by the Federal
17 Deposit Insurance Corporation staff, and are examined by
18 both. If they are members of the Federal Reserve System,
19 they are subject to examination by fed. examiners, and
20 receive such examinations. So you've got that. In
21 comparison, national banks are not examined by F.D.I.C.
22 or the Federal Reserve. They are examined only by the
23 Controller of the Currency's office. So you've got your
24 imbalance there in how many different sets of examiners
25 are coming in at different times.

1 Q Was the Sharpstown State Bank a member of the
2 Federal Reserve System?

3 A I don't know. It was a very large state bank.
4 It might have been.

5 Q Mr. Kimberlin, did you or anybody representing
6 the Texas Bankers Association appear before any legisla-
7 tive committee in connection with House Bill 72 and House
8 Bill 73?

9 A No, sir. Our position had not formalized until
10 after the session had closed.

11 Q In other words, the bills—were you aware that
12 those bills were introduced in the first called session
13 as House Bills 52 and House Bill 53?

14 A Yes, sir.

15 Q I presume your job as Executive Director, among
16 other things, is to keep track of legislation affecting
17 the banking industry, is it not?

18 A Yes, sir.

19 Q And I presume you subscribe to a legislative
20 service that keeps you informed as to what's introduced
21 and what's being heard and so forth in the Legislature?

22 A Yes, sir.

23 Q You were aware, then, that the bills were intro-
24 duced in the first called session?

25 A Yes, sir.

1 Q Did you so advise the members of your Association

2 A Yes, sir.

3 Q And then the bills—you were advised that the
4 bills were introduced again in the second called session?

5 A Yes, sir, we were.

6 Q And I presume you again advised the members of
7 your Association?

8 A I at least advised the members of our Board, in
9 the second go around.

10 Q Yes. And you were aware that these bills were
11 in the process of being passed by the Legislature; that
12 committee hearings were being held and votes were being
13 taken and they were going through the legislative processes?

14 A Yes. I became aware of the process getting under
15 way the day of the hearings in the first committee.

16 Q And the bills had already been passed before
17 the Texas Banking Association ever reached a point of
18 taking a position on them?

19 A That's correct.

20 Q So that as far as an individual member of the
21 Legislature is concerned, such as me—supposing I had
22 called you on the morning that the bills were going to be
23 voted on in the House and asked you how the Texas Banking
24 Association stood on these bills, what would you have told
25 me?

1 A I would of probably told you that we had it
2 under study and we had no position at that point.

3 Q That you had no position on it at that time?

4 A (The witness nodded.)

5 Q And your position was not crystalized until
6 the bills had cleared the Legislature and were on the
7 Governor's desk?

8 A That is correct.

9 Q And then the opinion that did crystalize was
10 one of opposition to the bills as written?

11 A Yes, sir. That's correct.

12 Q And resulting in the request by your Association
13 to the Governor for a veto of both of these two bills?

14 A Yes, sir.

15 Q During any of this legislative process, did you
16 make personal contact with either Speaker of the House, or
17 the Lieutenant Governor, or Representative Tommy Shannon,
18 or Representative Bill Heatley about these bills?

19 A No, sir.

20 Q Did you make contact with Senator Schwartz, or
21 Senator Patman, or Senator Strong, or Senator Wilson
22 about these bills?

23 A I may have seen Senator Strong briefly. I'm
24 not sure. I was over in the Senate side when they were
25 over there on the floor.

1 Q Do you know of anything pertaining to House
2 Bill 72 and House Bill 73 that is in any unusual or
3 different from what would be happening on any other bills
4 going through the legislative process?

5 A Well, I suppose they moved rather quickly,
6 really, I would say. Although, I have seen other measures
7 move rather quickly too.

8 Q Everything moves pretty fast in a called
9 session?

10 A In a special session. That's right.

11 Q Because of the time limit. If there was any-
12 thing unusual about these bills, it would have been the
13 speed with which they went through the process. Is
14 that correct?

15 A Yes, sir.

16 Q In your study of these bills and in your
17 exploration of the legislative action on them, did you
18 find anything or have any evidence of any kind to indicate
19 any connection between an elected state official's action
20 on these bills and any stock transactions involving
21 Sharpstown State Bank or National Bankers Life Insurance
22 Company?

23 A No, sir. Not at all.

24 MR. HALE: Thank you.
25

EXAMINATION

BY CHAIRMAN MURRAY

Q Mr. Kimberlin, is it fair to assume that because your Association entered no objection to the bills while they were going through the House and the Senate, is it fair to assume that you saw nothing objectionable in the bills?

A Well, we saw some of the things that were mentioned in the letter as defects: the examination procedures and that sort of thing. We had under consideration just the general concept, and it had merits and demerits.

Q Well, what caused the change of opinion, then, from no opposition to the bill to opposition to it?

A Well, we never were in a posture of no opposition. We were in a posture of studying it and it ended up in opposition to it.

CHAIRMAN MURRAY: Thank you, sir.

Any other questions?

I believe that's all, Mr. Kimberlin. We can excuse you at this time. We appreciate your courtesy in helping the Committee.

THE WITNESS: Thank you very much.

(The witness, Mr. Sam Kimberlin, Jr., was excused.)

CHAIRMAN MURRAY: Mr. McShane, if you will call

1 your next witness.

2 MR. McSHANE: Mr. Chairman, our next witness will
3 be Mr. Waggoner Carr.

4 CHAIRMAN MURRAY: Mr. Carr, will you raise your
5 right hand and be sworn.

6
7 MR. WAGGONER CARR

8 was called as a witness and, after having been duly sworn,
9 testified as follows:

10 EXAMINATION

11 BY MR. McSHANE

12 Q Would you state your name for the record, please,
13 sir?

14 A My name is Waggoner Carr. First name is
15 Vincent.

16 Q Thank you. And what is your address?

17 A Office address: 805 Capitol National Bank
18 Building, Austin, Texas, 78701.

19 Q What is your occupation, Mr. Carr?

20 A Attorney.

21 Q Are you a member of a law firm?

22 A No, sir.

23 O We have had testimony that you were formerly
24 associated with Mr. John Osorio—

25 A That's correct.

1 Q —and Mr. Eugene Palmer.

2 At what point in time was this association?

3 A Well, I would say from April or May, 1969,
4 until about the same time in '71.

5 Q Approximately a year then?

6 A Yes.

7 MR. SLIDER: Two.

8 A Two years. Yes.

9 Q Could you basically describe the type of
10 practice you have?

11 A That I now have?

12 Q Yes, sir.

13 A Well, it is just general practice.

14 Q General practice?

15 A Yes.

16 Q In your practice, do you do any of what commonly
17 is called legislative practice?

18 A I haven't in a good while. At one time I made
19 an appearance before a House Committee. This was in
20 1968, sometime along in there.

21 Q All right, sir.

22 A But otherwise not.

23 Q Are you familiar with House Bills 72 and 73
24 which were passed in the second called session of the
25 Sixty-first Legislature?

1 A Yes, sir.

2 Q And when were you first aware of those bills?

3 A Well as I recall, the first time I found out
4 anything about them was with Mr. Osorio, who at that time
5 was my law partner, came into my office here in Austin
6 and asked me if I would go to the Senate with him and
7 answer any questions that any of the senators might have,
8 if any of them had any questions, regarding the bill.

9 I asked him what the bill did. As I recall, I
10 hadn't seen it before, and he explained to me what the
11 bill did. Then he showed me a copy of the bill and I
12 confirmed that it did what he had explained it to do,
13 after which, and some more conversation as to who was for
14 it and who was against it, and that it had passed through
15 the House and through the House Committee, was then pend-
16 ing before the Senate, and the session was to be over in
17 a few hours. And that was the occasion for him asking if
18 I would go with him to the Senate on that occasion. I
19 guess we stayed up here about an hour.

20 Q All right, sir. When Mr. Osorio explained the
21 contents of the bills to you, do you recall basically
22 what the bills proposed to do?

23 A Yes, sir.

24 Q Could you give us your understanding of those
25 bills?

1 A Yes, sir.

2 Mr. Osorio told me that the purpose of the bill
3 was to provide an administrative process, or law, by
4 which banks, state banks, could gather together and form
5 a non-profit corporation. The purpose of the corporation
6 would be to insure bank deposits between the then figure,
7 F.D.I.C. figure, of fifteen thousand, and the ceiling of
8 one hundred thousand.

9 Q So you understood the legislation to provide
10 insurance in addition to that provided by F.D.I.C.,
11 rather than in lieu of?

12 A Oh, absolutely. At that time there was no talk
13 anywhere. This is Monday morning quarter-backing that's
14 coming in now, prompted by the SEC, but at that time there
15 was no talk about it being in place of the F.D.I.C. It
16 was in excess. I took the bill and I read it. The bill
17 says, "in excess." It still says, "in excess." The
18 emergency clause provides that the emergency is that there
19 is no insurance between the ceiling, F.D.I.C. ceiling of
20 fifteen thousand dollars and a hundred thousand, and that's
21 the reason for the bill. That expressed the legislative
22 intent. All this gobbledygook about it being for the
23 purpose of supplanting, or rather substituting, for F.D.I.C.,
24 was not in the picture at that time, nor so far as I'm
25 concerned, was intended.

1 Q Now, you stated earlier that Mr. Osorio, when
2 he approached you, also discussed who was for and who
3 was against the bill.

4 A Yes.

5 Q What was the substance of that conversation?

6 A Nobody was against it. Everybody was for it.
7 He mentioned that the Texas Banking Commission was for it.
8 He mentioned that the Texas Banking Association was in
9 favor of it. At least this was the image I got of our
10 discussion. He mentioned that it had passed the House
11 and the House Committee by a huge majority. He mentioned
12 that Mr. Sharp was for it, which I must say that at that
13 time, Mr. Sharp was Mr. Osorio's boss. That is, he was
14 Chairman of the Board of NBL and Mr. Osorio was President
15 of NBL. Mr. Sharp was a highly-respected gentleman who
16 was President of the largest state bank in Texas, and when
17 he mentioned that Mr. Sharp was for it, it didn't mean
18 anything to me. Everybody was for it. It seemed rather
19 normal to me that he would say that. To me it didn't
20 mean a thing. Just everybody was for it, Mr. McShane.

21 Q All right, sir. At this time, was NBL also a
22 client of your law firm?

23 A I don't know.

24 Q All right, sir. Now, it is your testimony that
25 you did accompany Mr. Osorio to the Senate?

1 A Yes, sir.

2 Q Do you recall which senators, if any, you spoke
3 to in regards to the bill?

4 A I have been asked that question many times, Mr.
5 McShane. I'll answer you the same way. I have been over
6 this story so many times. Everybody wants to hear it.
7 I would be glad for you to hear it, but to be frank with
8 you, the hour I spent here two years ago, was not that
9 important to me to remember all the details. I do not
10 remember who I talked to. Now, since that time—and I
11 did remember that I was there a short time, I estimated
12 about an hour, there were three or four senators that I
13 talked to. I don't know who they were, but since that
14 time, the Senator Bill Patman has said I discussed it
15 with him. I have no reason to doubt Senator Patman saying
16 that I discussed it with him. I probably did. He says—
17 from what I read in the paper, he says I asked him if he
18 could be for the bill, and he said he was against the bill,
19 and that was it. I believe that senator—rather,
20 Lieutenant Governor Ben Barnes says that I visited with
21 him. I think that's correct, in trying to recall what
22 happened. I think that while we were there, Mr. Osorio
23 suggested that we go by and talk with the Lieutenant
24 Governor to see the state of his calendar. I remember
25 this was the last hours of the session. And anybody who

1 has been in the Legislature knows the rush to get bills
2 on the calendar. There wasn't anything devious about
3 that. It was just a matter of getting a bill passed, or
4 not, because time was running out. And so we went to
5 see Mr. Barnes about the state of his calendar, whether he
6 thought he could get it up on the calendar. As I recall,
7 he said that he thought he could. It was a rather
8 routine discussion about the possibilities of what the
9 situation was. And that's all.

10 Then as I recall, we went back to the House—
11 rather to the office, and the next thing I heard anything
12 about it that I recall was that the Governor was going to
13 veto it. And this was sometime later.

14 Q All right. Mr. Carr, in addition to the three
15 or four senators that you may have spoken to, and in
16 addition to the Lieutenant Governor, do you recall that
17 you spoke to any other state officials concerning the
18 bills?

19 A I do not think I did. But again, my goodness,
20 whether I said, "Hello" to somebody that day, or, "How's
21 the bill doing?" there is nothing that sticks in my mind.
22 I'll say this to you, Mr. McShane, also, that my interest
23 in the bill was a personal interest. I own some stock in
24 a small Texas bank, the City Bank and Trust in Dallas. I
25 knew the trouble, the difficulty, that the small state

1 banks of Texas were having in competing with the large
2 banks of this state for the larger deposits. The only
3 thing we could offer them was the F.D.I.C. insurance of
4 \$15,000.00.

5 Well, a man who would come in and have
6 \$100,000.00, we'll say, just for example, that he wanted
7 to place in a Texas bank, would invariably place it in the
8 big banks, thinking that the big banks, with their superior
9 compensation, were safer than the small banks. So the
10 small banks had no chance to get these higher deposits.

11 So if the banks, under the supervision of the
12 state regulatory agency, could form non-profit corporations
13 to provide insurance up to \$100,000.00, then this would
14 give the small banks of Texas a better competitive
15 advantage with the big banks of Texas for these deposits.

16 Now, I own stock in a small bank. I didn't see
17 anything wrong with that. That was a good thing. It
18 was good for the depositors; it was good for the small
19 banks. It was good for my bank. The bill was a good bill,
20 designed to be a good bill.

21 Now, all this talk two years later, throwing
22 little insinuations about the intentions of people, or
23 that this word is not exactly as tight as that word should
24 be, and all of these things, was not in the picture at
25 the time. This bill cannot be judged—that is, the

1 intention of people—cannot be judged in 1972 with the
2 quarter-backing that going on, or '71, the Monday morning
3 quarter-backing, as the facts actually were as I knew
4 them in 1969, in my short time in connection with the
5 bill.

6 I appeared here because every citizen in this
7 State has a right to contact his representatives and
8 senators on any bill that he has a personal interest in
9 as long as he's not paid or he is not doing it for some
10 other person. Now, that's the way the law reads. That's
11 why I came up here and I so stated. I state it now; I
12 stated it numbers of times. I was right, legally right.

13 If I'd of known that I was going to have to go
14 through all this kind of investigation and stuff two
15 years later because somebody like Mr. Frank Sharp got in
16 trouble—remember, in '69, he wasn't in trouble, and the
17 bank was doing all right, and it was a big bank. That's
18 all I knew, just like you knew, I guess, back in those
19 days.

20 I just wanted to explain to you why I was here,
21 how I got here, why I came here, who I talked to as best,
22 and what the conversations were.

23 Q Mr. Carr, I have just one more question.

24 Do you have any personal knowledge of any wrong-
25 doing on the part of any public official in connection with

1 these bills?

2 A Not at all. I'll say this to you also. At the
3 time I came here on that September day, I had no infor-
4 mation at all that any stock had been bought by any state
5 official, nor any loans had been granted to any state
6 official. I found that out by reading the newspaper,
7 like everybody else. I'm not insinuating that there was
8 anything wrong, but I'm just trying to set the stage as it
9 actually was in '69 insofar as Waggoner Carr is concerned.

10 I at no time heard or saw or observed anything—
11 and I repeat, anything—that would lead me to believe, in
12 any way, that there was any reward promised, or anticipated,
13 or thought of, or asked for, or—you name it. All I'm
14 saying is, that was not in the picture that I saw at the
15 time in any top side or bottom side.

16 MR. McSHANE: Mr. Chairman, I have no further
17 questions.

18 CHAIRMAN MURRAY: Any questions of the Committee?

19 MR. HALE: I have a question.

20 CHAIRMAN MURRAY: Mr. Hale?

21
22 EXAMINATION

23 BY MR. HALE

24 Q Mr. Carr, counsel didn't quite go into your
25 background as much as I think— You served in the House of

1 Representatives for how many years?

2 A Ten years, sir.

3 Q Ten years. And Speaker of the House for two
4 terms?

5 A Four years. Yes.

6 Q Four years as Speaker of the House. During
7 your term as Speaker of the House, we also had a little
8 scandal, did we not?

9 A Yes, sir.

10 Q Involving an attempt to bribe a member of the
11 Legislature?

12 A Yes, sir.

13 Q And as Speaker of the House, what was your
14 action under those circumstances?

15 A Well, we investigated the situation. We
16 expelled a member from the membership of the House, and
17 further, through the cooperation of the district attorney
18 here in Travis County, he was tried—indicted, tried, and
19 sent to the penitentiary.

20 Q Two members of this Committee, I believe, were
21 members of the House at that time: Mr. Murray and myself.

22 A Yes, sir.

23 Q We took prompt action on it, the Committee
24 functioned properly, the investigation was made, and all
25 the facts brought to light in that situation, was it not?

1 A As far as I know.

2 Q And that has been your policy in all public
3 offices which you have held?

4 A Yes, sir.

5 Q Including that of attorney general?

6 A Yes, sir.

7 Q For what, six years?

8 A Yes, sir. Four years.

9 Q Four years?

10 A Yes, sir. Mr. Will Wilson beat me one time.

11 Q Well, I'm coming around to Mr. Wilson here in
12 just a minute.

13 What I'm leading up to is this, Mr. Carr, even
14 as a private attorney, in your dealings with House Bill
15 72 and House Bill 73, if you had seen any hanky-panky going
16 on, or anything that you thought was unethical or illegal,
17 it would certainly have been revolting to you in connec-
18 tion with your relationship with those bills. Is that
19 correct?

20 A Well, Mr. Hale, if I'd have thought that there
21 was even any effort to remove the F.D.I.C., I would not
22 have been for the bill. I'm for F.D.I. Insurance--F.D.I.C.
23 It doesn't go far enough. And this bill was finally killed
24 because of the competitive equalization of this, in my
25 judgment, between the small banks and the big banks. And

1 I accept that as a political reality in this State. But
2 I do not accept, under any conditions, any conniving, or
3 any bribery, or threat of bribery, or anything, and
4 never will. And I don't think it belongs in this case.

5 Q Do you feel like that's—you used the term,
6 "Monday morning quarter-backing" a minute ago, and a lot
7 of these allegations and insinuations against public
8 officials to a great deal is Monday morning quarter-backing,
9 people dreaming things out of the figment of their imagina-
10 tion. Is that correct?

11 A Mr. Hale, I'll just say it this way: I have
12 some very definite conclusions and evidence as to the
13 politics in this whole thing. I'm going to tell the story
14 at my own timing, if you'll let me, when the timing is
15 right. I don't think the timing is right at this time.
16 But I think it's knee high in political ambitions, and I
17 think that's what's governing the case. The law has
18 taken a back seat to politics.

19 And I want to make one other statement to you:
20 I think that when Mr. Will Wilson, and his political
21 cohorts in Washington, worked out this smelly deal with
22 Mr. Frank Sharp which allowed him, as he is now doing, to
23 parade around this state and ruin the prestige and honor
24 of the elected officials of Texas, with nothing but
25 innuendoes, hearsay and rumor, that they branded this whole

1 thing forever as a colossal, callous, political hatchet
2 job on the leadership of Texas, directed directly from
3 the Republican administration in Washington.

4 Q Would you say that the main thrust of this
5 SEC investigation at this time is the 1972 election?

6 A There is no doubt about it, and the stake is,
7 who wins the political campaigns in Texas in '72.

8 Q And you feel like Mr. Will Wilson is just sort
9 of the hatchet man for the Nixon administration in moving
10 into this area?

11 A No, I think it goes higher than him.

12 Now you're about to get my story, Mr. Hale.

13 Q Well I'm trying to, Mr. Carr.

14 A Well, I'm going to quit answering. I'm going
15 to time the rest of it when I get ready. Thank you. With
16 your permission, please.

17 Q Does it occur to you, Mr. Carr, a little odd
18 that everytime you pick up the paper for the last six
19 months the U. S. District Attorney in Houston is going to
20 have an indictment next week, but next week never seems
21 to come? Have you noticed that in connection with the
22 Grand Jury investigation in Houston?

23 A Well, sir, I just read the newspapers.

24 Q I'm getting this from the newspapers, although,
25 I'm going to make a motion before this Committee before our

1 investigation is over, that we subpoena the U. S. District
2 Attorney in Houston and find out what he knows about this
3 thing.

4 A Mr. Hale, that is still—

5 MR. NUGENT: Mr. Hale, would you accept an
6 amendment to that and subpoena the U. S. District Judge
7 down there about his personal involvement before he
8 became a Judge?

9 MR. HALE: Well, we might go into that, too.

10 A Mr. Hale, I would like at this point to get off
11 of this subject, if you don't mind. Because I didn't
12 intend to go this far at this time. I'm going much
13 further later, but if you will allow me the luxury of
14 picking my own time, I'd appreciate it.

15 Q Well, Mr. Carr, is it going to be in connection
16 with a political announcement?

17 A No, sir.

18 Q Of course, we're after information. I'm not
19 trying to delve into this, but I appreciate your remarks,
20 because I have, from my limited exposure to this, it
21 seems to me that the whole plan and thrust of this
22 thorough investigation has been politically oriented.
23 And it really seems odd to me they would pick a man who
24 was formally attorney for Mr. Sharp to head up this whole
25 thing, Mr. Will Wilson.

1 Did you know that he was attorney at one time
2 for Mr. Sharp?

3 A I read it in the newspaper.

4 Q You read also that he held—owned a bunch of
5 stock in National Bankers Life Insurance?

6 A I read that. Yes, sir.

7 Q I'm not sure. I believe maybe, I think maybe
8 I read somewhere that he borrowed a bunch of money from
9 the bank to buy some land, or something. He seemed to be
10 pretty deeply involved in this whole transaction. Do you
11 know anything about that?

12 A Only what I read, Mr. Hale. I state again to you,
13 I'm not here for the purpose of trying to attack anybody.
14 I'm here just trying to help this Committee get the facts
15 as they were in 1969, because that's when the acts were,
16 whatever they were, were committed and done. Not in '71.
17 And all of this stuff we've been reading about, that I've
18 been reading about in '71, is just plain out of step with
19 what I knew the facts to be insofar as I knew the facts
20 in 1969. Now, I must tell you, and you gain from my
21 testimony here that I did not play a large important
22 part in the whole picture. But the picture that I saw
23 was exactly as I have explained to you.

24 Q On August the 11th, 1971, in his testimony
25 before the SEC in Houston, Mr. Sharp testified to a

1 conversation that took place between him and John Osorio,
2 and in this conversation he quoted John Osorio in substance
3 as follows: that he was going to discuss these bills—
4 talking about the banking bills, 72 and 73—with Waggoner
5 Carr; that Waggoner had said—

6 A Who said this, now?

7 Q According to Mr. Sharp, John Osorio told him
8 this during their conversations while the bills were
9 pending, although, Mr. Sharp is very vague in his testimony
10 about dates and places. He seems to have a very prolific
11 memory on conversations, but he never can seem to fix the
12 time those conversations occurred. Mr. Sharp's memory is
13 a very convenient mechanism in this investigation.

14 He says that John Osorio told him that he was
15 going to talk to Waggoner Carr about these bills, and
16 then he quotes Osorio as follows:

17 "Waggoner Carr has several friends in the
18 Senate that are not on the Ben Barnes slate, and
19 I'm going to get him to do some work on this
20 before we really start to work on it."

21 Are you familiar—did John Osorio ever talk to
22 you along lines like that?

23 A No, he did not. I know nothing about a dis-
24 cussion that you have read me there.

25 Q And then the question was asked Mr. Sharp:

1 "Did Mr. Osorio, over the ensuing time,
2 report to, or advise you, that he had discussed
3 this aspect of it with Mr. Carr?"

4 Answer: "Yes, he called me back shortly
5 after, I would say three or four days after
6 this, and told me that Waggoner had made contact
7 with some of his friends in the Senate and that
8 he felt that they had seven sure votes and
9 possibly eight."

10 Did you ever tell Mr. Osorio anything like that?

11 A No, sir. Well, I've told you what happened the
12 day I went up there, but seven or eight—my goodness, the
13 whole senate was for it, I thought. There wasn't any
14 opposition to it. I don't know anything about the con-
15 versation between those two gentlemen. It was not done in
16 my presence.

17 Q Since he was granted immunity by the Federal
18 Judge, Mr. Sharp seems to have a very keen recollection of
19 the details of a lot of conversations that implicate
20 different people. That is what I was trying to bring out.
21 Although, his memory is conveniently hazy about dates and
22 places.

23 You know nothing about any such—you never had
24 any conversations with Osorio about how many votes you had
25 in the senate for these bills?

1 A No, sir. I wasn't trying to round up votes,
2 other than just if some senator had some question while I
3 was there, would I see if I could answer it, and I told
4 him, "Yes." I talked to three or four senators, and I've
5 told you who, to the best of my recollection, and who I
6 can't remember to the best of my recollection. And I
7 wasn't counting votes. This was a bill that had no
8 opposition. It was just a matter of getting it up. That
9 was my impression at the time. I think that is accurate:
10 getting it up on the calendar.

11 Q Did you ever talk with Mr. Frank Sharp about
12 these bills?

13 A No, I don't think I ever did. I'm quite sure I
14 didn't. I've seen Mr. Sharp only twice, as I recall, in
15 my life, Mr. Hale.

16 Q Even though your partner at that time was
17 President of the company he was chairman of the board of,
18 you had no personal contact during those years of your
19 association with Osorio?

20 A You mean while we were partners, or anytime?

21 Q Yes.

22 A No. The answer is no. I had no connection with
23 NBL. I had no stock in NBL. I had no job with NBL. I
24 had no connection with NBL. Mr. Osorio never discussed
25 NBL with me. That was his business.

1 Q Your firm did not do the legal work for NBL?

2 A We did some legal work from time to time, Mr.
3 Hale. I did not, myself.

4 Q You didn't personally do anything for him?

5 A We had a law firm of some ten lawyers, and you
6 know how those things are. Everybody is busy and he is
7 with his own clients. NBL was not my client.

8 Q In your contacts in the legislative field in
9 connection with House Bills 72 and 73, did you find any-
10 body who was opposed to these bills with the possible
11 exception of Senator Patman, whom you mentioned a minute
12 ago as indicating he might be against the bill?

13 A I don't recall anybody.

14 Q Did John Osorio ever say anything to you during
15 the time you were working on these bills about any arrange-
16 ment he had with Ben Barnes?

17 A No, sir.

18 Q He never discussed with you any such statements
19 as Mr. Sharp insinuated that he had "taken care of Ben,"
20 I believe is the way he put it?

21 A Oh, no. Absolutely not.

22 Q You think that was sort of a figment of Mr.
23 Sharp's imagination too?

24 A Well, I just don't have any idea about that. I'm
25 just telling you what I know and what I observed, Mr. Hale.

1 I don't know how Mr. Sharp thinks, or what kind of man he
2 is, frankly.

3 Q He thinks rather fuzzily. He has a "tacit
4 understanding," I believe, is his phrase, with everybody.

5 MR. NUGENT: Except me.

6 Q And then three years later he reads into that
7 whatever he wants to read into it.

8 Okay. I have no further questions of this
9 witness. Thank you, Mr. Carr. You've been very helpful.

10 CHAIRMAN MURRAY: Mr. Nugent has a question.

11 MR. HALE: Let me say, Mr. Chairman, before I
12 release the witness, that I was pleased to serve under Mr.
13 Carr for the two terms he served as Speaker, and I think
14 he did an outstanding job as Speaker of the House.

15 THE WITNESS: Thank you, sir.

16 CHAIRMAN MURRAY: Mr. Nugent?

17
18 EXAMINATION

19 BY MR. NUGENT

20 Q Mr. Carr, yesterday Mr. Sharp, the federally
21 convicted felon who appeared here under every sort of
22 waiver that the Federal Government could give him, sat in
23 that same approximate area that you're sitting and said
24 that it was his understanding that the seats on the State
25 Finance Commission had been bought. And yet, when I

1 specifically named the members of that Commission for him
2 and asked him if he had any knowledge whatsoever, the man
3 had no information to direct questions. It seems to me
4 that he is taking a broad brush and simply painting anybody
5 in the State that may have been active in catching his
6 wrongdoing in the bank down there.

7 Now, do you have any knowledge of any wrongdoing
8 that he did in the bank, like taping the conversations in
9 all of the rooms of the bank, listening in on the opposite
10 parties in ways that were made through his elaborate
11 wire-tapping operation, or any of this other information
12 such as wire tapping the confidential meetings of the
13 F.D.I.C. men who were looking over the bank records and
14 the rest of it. Do you have any knowledge of that?

15 A No, sir. I don't have any knowledge of it. I
16 haven't even heard anything about it until you just said
17 it.

18 Q Well, I just heard about it myself and I want
19 to ask Mr. Sharp, when we get him back here, about some of
20 those things.

21 Do you, of your own knowledge and your long years
22 in politics in the State of Texas, know of any seat on the
23 State Finance Commission that has ever been bought?

24 A The answer is no, and I will further say, Mr.
25 Nugent, that the men I've known that have served on that

1 Commission have been top notch people, church people,
2 leaders, civic leaders, and done it at considerable sac-
3 rifice to themselves, and I have no reason to think they
4 had any other motive.

5 Q Don't you think it is a shame that we've got
6 federal officials who will give to a man like this a
7 license to say anything he wants to without any criminal
8 penalties attached to it, and simply walk around this
9 State smearing people, that are in no way involved, at his
10 mere whim and fancy?

11 A Well, I've never known it to happen before, Mr.
12 Nugent, and I believe I described it a while ago as
13 "smelly."

14 Q Yes, sir.

15 MR. NUGENT: I believe I have no further
16 questions.

17 CHAIRMAN MURRAY: Any other questions?

18 Mr. Haynes?

19
20 EXAMINATION

21 BY MR. HAYNES

22 Q Mr. Carr, you told the Committee that in your
23 opinion the bills would supplement the F.D.I.C. deposits.
24 When, to your knowledge, did Mr. Sharp begin testifying or
25 telling the story that from the inception of the drafting

1 of these bills, his sole intention was to take state banks
2 out from under the F.D.I.C. regulations? When was this
3 first brought to your attention?

4 A Mr. Haynes, the first time that I heard anything
5 suggested of that type was not in 1969 or 1970. It was
6 in 1971 when the SEC said that's what it did. And I was
7 completely amazed that a construction of this type could be
8 put on that bill. Now, with "Monday morning quarter-
9 backing," if we were to sit down today—and Gene Palmer I
10 understand is the one that drew it up—if we could sit down
11 with Gene Palmer, we could probably word some of it a
12 little tighter, some legal phrases. I don't deny that.
13 But the intent was, and the purpose of the bill as explained
14 to me and as I read it and as I read it today, was to
15 supplement—not substitute for—the F.D.I.C.

16 I don't think today, under that bill, that Mr.
17 Sharp, if he wanted to, could withdraw from the F.D.I.C.
18 and still have the first \$20,000.00 of his deposits, if he
19 had deposits, insured. Because I think the intent of the
20 Legislature at that time was clear and I think it is clear
21 today. It was to provide insurance in excess of the
22 F.D.I.C.

23 Q Well, thank you, sir, and I think that every
24 member of the Legislature that cast a vote for the bill
25 was certain that that's what these bills would do.

1 MR. HAYNES: Thank you very much.

2 THE WITNESS: You're welcome, sir.

3 CHAIRMAN MURRAY: Any other question?

4 Mr. Waggoner, I just want to say to you that
5 should anyone question your good judgment, just remind
6 them of the excellent Investigating Committee you appointed
7 back in '61 and '62 and I think they'll recognize your
8 good judgment.

9 Let me also say to you that we appreciate your
10 cooperation in getting back from Houston so you could
11 testify before us this morning.

12 Thank you very much.

13 THE WITNESS: Thank you.

14 MR. NUGENT: I have one other observation.

15 THE WITNESS: Yes, sir.

16 MR. NUGENT: Mr. Carr, many of us are going to
17 wait with a bated breath this knowledge that you say you
18 would like to time better. I particularly am interested in
19 it because I'm beginning to see and smell some of it my-
20 self. I hope you don't wait too long to let us all have
21 the benefit of it.

22 THE WITNESS: Mr. Nugent, I'm getting nervous
23 about it myself. I'd like to bring it out. I'm just
24 keeping my cool right now.

25 MR. NUGENT: All right, sir.

1 THE WITNESS: But there will be a day.

2 CHAIRMAN MURRAY: Thank you very much, Mr. Carr.

3 (The witness, Mr. Waggoner Carr, was excused.)

4 CHAIRMAN MURRAY: Mr. McShane, will you call
5 your next witness?

6 MR. McSHANE: Mr. Chairman, our next witness
7 will be Mr. Clay Cotten.

8
9 MR. CLAY COTTEN

10 was called as a witness and, after having been first duly
11 sworn, testified as follows:

12 EXAMINATION

13 BY MR. McSHANE

14 Q Would you state your name for the record, please,
15 sir?

16 A Clay Cotten.

17 Q And your address?

18 A 2806 Dell Kirk, Austin.

19 Q And what is your occupation?

20 A I am Commissioner of Insurance.

21 Q How long have you held that position?

22 A Since November the 15th, 1965.

23 Q Has your Department been directed to investigate
24 the National Bankers Life situation by House Resolution
25 Number 266?

1 A Yes. By a resolution. I believe that's the
2 correct number.

3 Q Could you basically describe for us the thrust
4 of that investigation and your progress thus far?

5 A Well, of course, we already had, in the course of
6 examination, the company at the time the resolution was
7 adopted. That examination has been completed, and has
8 been furnished to the Attorney General and to this
9 Committee, showing the financial condition and the trans-
10 actions in the company.

11 Q But that examination had actually been commenced
12 prior to the passage of the resolution. Is that correct?

13 A Yes, that's correct. Additional information has
14 been furnished. The Committee has been furnished with the
15 stock transfer records from the transfer agent and from
16 some inner-office reports, and has been furnished a
17 duplicate of all material that was furnished both to the
18 Attorney General and to the district attorneys of Harris,
19 Dallas and Travis Counties.

20 Q All right, sir. During the course of this
21 investigation, did you have, or this examination, as you
22 put it, did you have occasion to speak with Speaker
23 Mutscher in reference to NBL?

24 A Yes.

25 Q When was this, sir?

1 A I believe that that would probably have been in
2 October. I'm certain it was October, of 1970.

3 Q And where did this meeting take place?

4 A In the Speaker's office.

5 Q And what was basically the substance of this
6 meeting?

7 A Well, I received a call from Representative
8 Shannon that he and the Speaker would like to see me. I
9 met with them in the Speaker's office. The Speaker told
10 me that he understood that National Bankers Life Insurance
11 Company had some problems. I told him that they did have;
12 that we presently were examining them and that I had—
13 He told me Mr. Sharp was a friend of his and that he was
14 interested in what the situation was in the company. I
15 told him that I had requested Mr. Sharp to resign from the
16 Board of Directors and that I had requested, or had
17 directed the company to sell Loyal American Life, and that
18 Mr. Sharp had been directed to reverse some of the trans-
19 actions; that Mr. Stock had been made President of the
20 company and if Mr. Sharp would follow my directions in
21 this matter that I thought that there was a good possibility
22 we would be able to save the company; that I considered
23 the policyholders safe at that point.

24 Q What was basically the reason for your requesting
25 Mr. Sharp's resignation from the Board?

1 A Well, of course, Mr. Sharp was a—he had other
2 interests, and the transactions that had taken place—
3 Well, I suppose I should go back to my original contact
4 and conference with Mr. Sharp at the time that he purchased—
5 not he, but one of his corporations, Sharpstown Realty—
6 purchased a controlling interest in the company. I held
7 a conference at that time with Mr. Sharp and at that point
8 I inquired as to what he planned to do with the company,
9 how it would be operated. I told him that it was a public
10 interest corporation, could not be dealt with as a private
11 one. But regardless of the promises that he made to me
12 there, it would be conducted in that way and it could not
13 be strengthened.

14 There had been transactions between Sharpstown
15 Realty and some of the other corporations of Mr. Sharp
16 that had occurred were to the detriment of the company.
17 And I told Mr. Sharp that in view of those transactions
18 and his obvious conflict of interest, that I felt that
19 it was necessary that he and Mr. Novotny resign from the
20 Board of Directors.

21 Q When you advised Mr. Mutscher of your request for
22 Mr. Sharp's resignation, did he attempt to intercede for
23 Mr. Sharp?

24 A No, he did not.

25 Q Did Mr. Mutscher state what his interest in

1 having you come over was?

2 A Well, as I stated before, that he said Mr.
3 Sharp was a friend of his and he understood that National
4 Bankers Life Insurance Company might have problems, and
5 that he was interested in it.

6 Q Did Mr. Mutscher indicate to you that he owned
7 or had owned stock in National Bankers Life Insurance
8 Company?

9 A No, he did not. I was not aware that he did own
10 any interest, if he did at that point, or had owned any
11 interest.

12 MR. McSHANE: Mr. Chairman, I'll pass this
13 witness at this time.

14 CHAIRMAN MURRAY: Any questions of Mr. Cotten?

15 Mr. Slider?

16
17 EXAMINATION

18 BY MR. SLIDER

19 Q Mr. Cotten, how long have you known Frank Sharp?

20 A Well, I met him the first time when Mr. Will
21 Wilson brought him to my office when he was buying into
22 National Bankers Life Insurance Company, and it was at this
23 conference that I spoke of a moment ago when I first met
24 him.

25 Q Did I understand you to say when Will Wilson

1 brought him to your office?

2 A Yes. Mr. Will Wilson was his legal counsel
3 and he advised me that Mr. Sharp was going to acquire the
4 controlling interest in National Bankers Life Insurance
5 Company.

6 Q What year would you say that was?

7 A That was in 1968.

8 Q 1968?

9 A Yes, sir.

10 Q How many times has Mr. Frank Sharp been in your
11 office since 1968?

12 A I would say approximately five times. It could
13 be one more or one less than that.

14 Q Did Mr. Sharp ever come to your office with Mr.
15 Osorio?

16 A Mr. Osorio was present at that conference
17 that I spoke of, the initial conference.

18 Q With Will Wilson?

19 A Well, let me correct— I believe that I mis-
20 stated. Mr. Will Wilson came to me and told me that Frank
21 Sharp was buying, was going to acquire the control of the
22 company. This was a conference that I had just with Mr.
23 Wilson. And I told him that I would want to have a
24 management conference, I would want to have a conference
25 with Mr. Sharp and the other people that would be involved

1 in the future operation of this company, to go over what
2 we expected of them so that we would also make my staff
3 available, or they could ask us any questions that they
4 wanted to.

5 Now, at this conference, which we call a
6 management conference, Mr. Osorio was present at that
7 conference. Mr. Will Wilson was not present. I believe
8 that Mr. Joe Osbourn came with Mr. Sharp. Mr. Joe Osburn
9 was either a partner or an associate of Mr. Wilson.

10 Q Do you have any knowledge of whether Mr. Will
11 Wilson has ever been a stockholder of National Bankers
12 Life?

13 A Yes. I have knowledge from the examination of
14 the company that he did own stock in National Bankers Life
15 Insurance Company.

16 Q How long did it take the Insurance Department
17 to examine the records of National Bankers Life?

18 A Well, of course, National Bankers Life is a
19 fairly large company. I ordered an examination, I believe,
20 in August of 1970, with the examination beginning on or
21 about September 1st, 1970, and was still in process at
22 the time that the SEC suit was filed.

23 At that time I ordered the examination to be
24 brought up through the year 1970. It was originally
25 scheduled through June 30th, 1970. You know, you have to

1 examine a company after dates occur.

2 Q Is there any legislation that you think that
3 could be passed that simplify the examination of a company
4 such as National Bankers Life?

5 A Well, let me say this: I think that the
6 Legislature has already passed such an Act. And I would
7 like to refresh your memory that you sponsored that Act in
8 the House. It was the "Asset Protection Act" which is an
9 Act that requires companies to have on hand at all times
10 assets equal to the reserves required by law, and under
11 this Act, instead of having to completely examine a
12 company, I can now send an examiner into the company, look
13 at their unencumbered assets, free and unencumbered assets,
14 make a quick calculation or advancement of their reserves,
15 and can determine whether or not the company is in financial
16 trouble and be in position to sustain it in court, within
17 a matter of days, rather than months, under our old
18 procedure in law.

19 Q Are you aware of when Mr. Will Wilson was
20 appointed Assistant Attorney General?

21 A I do not. I have no awareness of what date it
22 was.

23 Q What year?

24 A I suppose that it would have been probably in
25 the early part of 1969. I recall that I was going—I had

1 some business somewhere, I don't even recall whether it was
2 Dallas or exactly where in the State that I was going that
3 I caught a plane here in Austin and Mr. Will Wilson was
4 leaving that morning for Washington for that appointment.
5 But I don't recall that—I think it was January or
6 February of '69.

7 Q Are you aware, Mr. Cotten, I'm sure, that Mr.
8 Will Wilson traded National Bankers Life Stock, bought the
9 stock on February 10, 1969, aren't you?

10 A Well, sir, I do not have that schedule before
11 me.

12 Q Are you aware that he also continued buying
13 National Bankers Life Stock until February 7th, 1969, at
14 which time he purchased 1,200 shares? Are you familiar
15 with that?

16 A Well, I previously furnished the Committee with
17 what the stock records and transfer records reflected of the
18 company. I do not have it before me. If you are quoting
19 from that, yes, I am aware of that.

20 MR. SLIDER: Thank you, sir. I have no further
21 questions.

22 CHAIRMAN MURRAY: Any other questions of Mr.
23 Cotten? Mr. Haynes?
24
25

EXAMINATION

BY MR. HAYNES

Q Mr. Cotten, you stated earlier that the reason that you requested that Mr. Sharp and Mr. Novotny resign from the Board of Directors of NBL, it was because of certain irregularities in which they were handling the company's business, either in loans or stock transactions or whatever it might be. And could you give us some specific examples from your memory as to why specifically you requested them, and maybe give us one, or two, or three examples?

Q Well, Mr. Sharp had represented to me and also—I would like to back up. Mr. Will Wilson, when he came to me, said Mr. Sharp was interested in building a strong insurance company, and that the plan would be that some of the assets in National Bankers Life Insurance Company that were low-yield and were of less quality than the company should have, or that would be in the best interests of the company, from time to time would be replaced with higher yielding and better investments, and I told him, well, of course, as long as it was flowing in that direction, I'd have no objection, as long as the insurance company was benefiting from it. So this was part of the matters that we discussed in the initial conference.

Well, when I received a copy of Pete, Marwick,

1 Mitchell's audit report in May of 1970, disclosing some of
2 the transactions that had taken place, it was obvious to
3 me that instead of the insurance company's interests being
4 served, that other Sharp interests had been served in the
5 transactions that had taken place; that we had assets
6 that were of lesser quality and that numerous loans had
7 been made to Sharp enterprises.

8 And when I confronted Mr. Sharp with this, he
9 told me that he recognized that he had not kept faith with
10 what he told me he was going to do, but that the
11 restricted money market, the tight money market had just
12 made it necessary that he do so.

13 I told him that in view of this conflict of
14 interest that I expected both he and Mr. Novotny, who was
15 principally handling his other Sharp enterprises, to
16 remove themselves from the Board.

17 Q From these examinations, did you detect at that
18 time, along with these transactions, were there any
19 transactions involving high state officials that could be
20 considered irregular in any way?

21 A No, sir. I don't believe that the records of
22 the company reflect any transaction with any state officials.

23 Q Thank you.

24 A No direct transactions at all.

25 MR. HAYNES: Thank you.

1 CHAIRMAN MURRAY: Any other questions?

2 MR. NUGENT: I have one.

3 CHAIRMAN MURRAY: Mr. Nugent?

4
5 EXAMINATION

6 BY MR. NUGENT

7 Q Mr. Cotten, do you have any information, any
8 records, any knowledge of how Mr. Sharp financed the pur-
9 chase of NBL?

10 A The examination report reports a transaction for
11 the payment on the note, and the purchase fell due in October,
12 I believe it was; that a loan was made by National Bankers
13 Life Insurance Company to Sharpstown Realty in the sum
14 that was due, the exact sum, I believe, that was due to
15 finally pay off the company.

16 Now, the company received some security at that
17 point. Some of it was in limbo and was not firmed up until
18 later. It appears that this was the source of the funds
19 from which—this was the first step in whatever chain that
20 was followed thereafter for the payment of that note.

21 Q Let me see if I understand what you're saying.
22 Are you saying that money was furnished by the Life
23 Insurance Company, NBL, through a loan to Sharpstown
24 Realty for the purchase of the Insurance Company itself?

25 A No, sir.

1 Q Am I understanding you correctly?

2 A Mr. Nugent, I am not exactly saying that. I'm
3 saying that concurrent with the date when the loan was
4 due, that this transaction occurred in the same amount,
5 and I am not in a position to testify that these specific
6 funds were used to pay it off. But they were concurrent
7 with the dates at the time of the payoff.

8 Q Do you remember the amount of those funds?

9 A They are set out in the examination report, but
10 they're somewhere in the neighborhood of three and a half
11 million dollars, I believe.

12 Q Let me rephrase it and see if I understand it.

13 National Bankers Life, at a time when the note
14 was due on the payment of the purchase of the company,
15 loaned Sharpstown Realty the exact amount that was needed
16 to make the payment?

17 A I believe that is correct. The exact amount.

18 Q And this exact amount was a figure in the
19 neighborhood of three and a half million?

20 A Yes, sir. Of course, I am quoting just from
21 memory. I have not reread that voluminous examination
22 report in some time. But it is set out in the examination
23 report.

24 Q From your knowledge of the National Bankers Life
25 Company, was it financially sound at the time Mr. Sharp

1 and his interests purchased the company?

2 A Well, it was certainly my opinion at the time
3 that they purchased it, and I believe, now—I have no
4 evidence to the contrary—that the company did meet the
5 statutory requirements. They did have the capital and
6 surplus required by law at the time Mr. Sharp acquired it.
7 I have no reason to believe otherwise.

8 Q From you or your Department's examination of that
9 company, from that time until now, what caused the company
10 to become insolvent?

11 A Well, of course, there are numerous reasons,
12 numerous transactions that would lead to this, but the
13 straw that really broke the camel's back was the fact that
14 this company had as security for loans made to the Sharp
15 enterprises, approximately \$4,000,000.00 worth of Sharpstown
16 State Bank stock as security. Of course, when that bank
17 became insolvent, that stock became a zero figure on the
18 books of the company. Additionally the—

19 Q Who owned the Sharpstown State Bank stock that
20 was pledged to NBL to secure a loan?

21 A I believe that a substantial portion of that came
22 through Sharpstown Realty. I think some of it may have
23 come through the Jesuit Fathers. I'm sorry that I can't
24 lay these out in exactness. If you want, I could get a
25 copy of the examination report and give you the exact

1 figures on it.

2 Q Do you think Mr. McFarland might be able to
3 chase that information for us when we talk to him?

4 A Oh, yes. As a matter of fact, any members of
5 my staff, Mr. Voorhees and Mr. McFarland, or others, can
6 give you those exact figures, and if you would like, we'll
7 extract them from this examination. I know that the
8 Committee has many, many records to look at, and we're
9 talking about a 300 page examination report. We can iden-
10 tify those specifically for you in the examination report,
11 if the Committee would like.

12 Q I guess what I'm getting at is, from your
13 examination of this insurance company, were you able to
14 find a thread of self-dealing with the officers of the
15 company running through there, and was this, perhaps, the
16 cause of the company going broke?

17 A Yes. There was substantial evidence that there
18 had been some self-dealing, and that originally the
19 National Bankers Life had acquired the controlling stock
20 of West Virginia Life Insurance Company, with a mergering
21 process. There was what I would call numerous—well,
22 numerous is a relative term, but I would say that there
23 were five or six transactions that had taken place in
24 West Virginia Life that this company inherited where the
25 transactions were improperly secured, or where the security

1 behind those loans turned out to be either worthless or
2 wholly inadequate. There was a loan, of course, that was
3 made both to Mr. Osorio and Mr. Carr, later rearranged after
4 we called to Mr. Osorio's attention the fact that he was
5 an officer and director, a \$550,000.00 loan. A guaranty
6 was made to the Exchange Bank and Trust in Dallas. A
7 suit on that had been filed by the attorneys for the—
8 previously attorneys for the conservator, and now attorneys
9 for the receiver. There were these types of transactions
10 that occurred that were very detrimental to this company.

11 Q Is it your opinion that the legislation passed
12 during the last session of the Legislature this year is
13 adequate to give you the power and the tool in order to
14 enable you to enact more expeditiously than you were able
15 under the old laws relative to a situation such as this?

16 A Mr. Nugent, with your permission, I'd like not
17 to answer that with just yes or no. I would like to
18 elaborate on my answer, "Yes."

19 This Legislature, in my opinion, is due credit—
20 and I think historically have passed the strongest insur-
21 ance legislation of any Legislature in the existence of
22 this State. They adopted the Holding Company Act, which is
23 going to be one that will give the Commissioner and the
24 Board an authority that we did not previously have that
25 would deal with the types of situations that did occur in

1 National Bankers Life Insurance Company. You were sponsor
2 of that bill, and House Bill 1830, which is a supplemental
3 bill that fits in with the Holding Company Act that deals
4 with individuals dealing with an insurance company, a bill
5 that, I believe you were co-sponsor—I believe there were
6 three sponsors in the House on that bill—together with
7 Mr. Slider's bill and other bills that have been adopted
8 by this Legislature. I think that we, that Texas has,
9 at this point, some of the strongest insurance laws in
10 the United States.

11 In addition to that, by concurrent resolution of
12 the Senate and the House, a committee has been formed, of
13 which I am chairman, that will be composed of the presidents
14 from insurance company associations and four members of
15 the Legislature, to study what additional legislation might
16 be needed in the future, particularly in the insolvency
17 area.

18 So I would have to say that, in my opinion, this
19 Legislature has done an outstanding and historical job in
20 promulgating legislation.

21 Q Let me ask you another question.

22 Is it your opinion at this time that you have
23 all of the statutory laws necessary to give both the
24 stockholders and the policyholders of insurance companies
25 in Texas a reasonable assurance that their company is going

1 to be operated in a financially-sound manner?

2 A Yes, I do, very definitely.

3 Q Do you have enough people and enough money so
4 that you can check these people often enough to know that
5 the public's not going to suffer?

6 A Well, assuming that we all get paid on the
7 price-freeze situation, the Legislature did increase our
8 appropriation. They gave us more people. We did not get
9 all of the people that we asked for, but the Legislature
10 gave us substantially those that we, in reconference,
11 emphasized that we felt were necessary.

12 I believe that we will be equipped to perform
13 the duties under the new laws and the new authority that
14 the Legislature has given us.

15 Q Do you know anything else about the operation,
16 the books, the background and the records of NBL, that you
17 think this Committee ought to be acquainted with?

18 A Well, I have—no. I think that I have given
19 this Committee, through the complete examination report
20 and other material I have furnished, I don't feel that
21 there is any particular areas that would require emphasis
22 at this point, unless the Committee has some questions in
23 that area.

24 Q All right.

25 MR. NUGENT: I have no further questions.

1 BY CHAIRMAN MURRAY

2 Q Mr. Cotten, along the line of this needed and
3 valuable legislation that we passed in the last session,
4 suppose some people come along and simply don't live up
5 to that legislation; they violate the law. Have you got
6 enough authority to do something about it? What is the
7 penalty for it? Let's take this Asset Protection Act.
8 Let's say some company doesn't comply with that Act. What
9 can you do about it?

10 A I can revoke their Certificate of Authority.
11 Also in addition to that I—heretofore, we have been in
12 this position, that when you go to court in asking for a
13 receivership, that you must have a completed examination
14 report, unless you do have something so flagrant, that it
15 is obvious proof.

16 But heretofore we have had to have a complete
17 examination report. You can count their assets, but you
18 also have got to be certain of all liabilities in a
19 company before you know whether they're solvent or not.

20 Under this Act, I don't need to concern myself
21 with their solvency. I can concern myself with whether or
22 not they've got the assets to back up the reserves required
23 by law, and if they do not have them, in my opinion, I
24 have adequate grounds to ask the Attorney General to bring
25 an immediate receivership proceedings. In addition, I have

1 authority, as Commissioner of Insurance, to place a company
2 under supervision, which is an injunctive-type order,
3 which the Legislature passed some four years ago, where I
4 can prohibit their doing anything with their assets during
5 a specific interim of time, and then after a sixty-day
6 period, can take them into conservatorship. So, with
7 that Act, I feel that I can move much faster than I
8 could before.

9 Q Adequate penalties, you think, too?

10 A The penalty is revocation of license, or to
11 enjoin them, or stop them from doing business.

12 Q Let me go back to a statement that you made
13 about asking Mr. Sharp to resign. What did he say in
14 response to that request, or what did he do?

15 A Well, he asked that I grant both him and Mr.
16 Novotny a thirty-day period. I told him that I would
17 grant that with the understanding that neither he nor Mr.
18 Novotny would vote on any matters concerning any of the
19 assets of the company, and that I would be advised in
20 advance, by the company, of any proposed transactions that
21 might be coming before that Board of Directors.

22 Mr. Novotny did resign. And among the other
23 demands that I have made on Mr. Sharp was a restoration,
24 or reversal of funds, that would put the company back about
25 \$3,000,000.00 better off. Mr. Sharp had assured me that

1 he would do this immediately.

2 He had not done that at the end of the thirty
3 days, and he kept saying that it was going to be embarrass-
4 ing to him to resign, but that he was working on the
5 \$3,000,000.00, so I was more interested in getting the
6 \$3,000,000.00 back in the company than I was in getting
7 him off of the Board, if I could accomplish that by not
8 making a hard push on insisting that he go right ahead and
9 turn in his resignation.

10 As long as I felt that I had his hands as a
11 director tied, that he could not vote on anything. So,
12 we went along in this situation, and always I would get
13 reports that he had this deal working or that one working,
14 and that he was going to do what I'd instructed him to do,
15 but it was never accomplished.

16 At one point I told Mr. Sharp that I would agree
17 for him to remain on the Board until the next annual
18 election if he did not vote on any matters and continued
19 under the same arrangement, if he would go ahead and get
20 this \$3,000,000.00 transaction straightened out, and that
21 he could resign at that time and not put himself up for
22 reelection.

23 Q He didn't follow that recommendation?

24 A No, sir. Well, of course, before the annual
25 meeting, the company was placed in conservatorship and then

1 receivership. But I never did get the \$3,000,000.00.

2 No, sir.

3 Q Sir?

4 A I never did get the \$3,000,000.00. No, sir.

5 Q All right. Suppose we come into another situa-
6 tion like that tomorrow. Have you got the necessary
7 authority if you feel that a certain man should resign from
8 the Board and you instruct him to resign and he doesn't do
9 so, can you do something about it? Can the Insurance
10 Department do something about it?

11 A Yes, sir, I can. I do have the authority to
12 do it.

13 Q Fine.

14 A Both under some of the old laws and under the
15 new laws that have been enacted.

16 Q All right.

17 CHAIRMAN MURRAY: Any other questions?

18 Mr. Hale?

19 BY MR. HALE

20 Q Mr. Cotten, you are familiar with the provisions
21 of HSR 266 that was passed by the last session. That was
22 the resolution that instructed you and several other
23 agencies to collect what materials you had on this
24 National Bankers Life and Sharpstown State Bank, and
25 coordinate it with the Attorney General.

1 A Yes, sir.

2 Q Do you recall that resolution?

3 A Yes, sir.

4 Q In connection with that resolution, you have
5 turned over a lot of material to the Attorney General, I
6 presume?

7 A Yes, I have, Mr. Hale.

8 Q Did the Attorney General's office ever at any
9 time instruct you not to release any of that material to
10 the House General Investigating Committee?

11 A No. No such instruction. As a matter of fact,
12 Mr. Hale, in response to that resolution, the Attorney
13 General wrote a letter to all of us who were named in the
14 resolution, and in response to his letter, and at the same
15 time, I wrote to Mr. Menton Murray who is Chairman of this
16 Committee, and furnished him with a copy of my reply to
17 the Attorney General and advised him that I would make
18 available to this Committee all of the material that I
19 gave to the Attorney General. And I have made all of that
20 available, and have turned it over to this Committee.

21 Q We appreciate your cooperation on it. We haven't
22 had quite that excellent cooperation from the Attorney
23 General's office.

24 A This Committee has everything that I—unless, in
25 putting it together, we may have left out a piece of paper

1 inadvertently, but this Committee has everything that I
2 have furnished to the District Attorneys of the three
3 counties named, and to the Attorney General.

4 Q In connection with the investigation that your
5 department made in the National Bankers Life Insurance
6 Company, and in connection—and it's still in receivership
7 with your agency. Is that right?

8 A Yes, that's correct.

9 Q And in connection with all of that, have you
10 uncovered any information that in any way would indicate
11 to you that there is any relationship between transfers of
12 stock in National Bankers Life Insurance Company affecting
13 elected state officials and the passage or defeat of any
14 legislation in the Legislature during the past two years?

15 A Nothing. I have no evidence to that effect,
16 and none was developed in the examination or at the
17 investigation under the House Resolution 266.

18 MR. HALE: Thank you. That's all.

19 CHAIRMAN MURRAY: Any other question?

20 Thank you, Mr. Cotten. That's all.

21 (The witness, Mr. Clay Cotten, was excused.)

22 CHAIRMAN MURRAY: We're going to take about a
23 five-minute break and then we'll be back here to finish
24 up.

25 (Brief recess.)

1 CHAIRMAN MURRAY: The Committee will come to
2 order.

3 Mr. McShane, if you will, call your next
4 witness.

5 MR. McSHANE: Mr. Chairman, the next witness will
6 be Mr. Robert Stewart.

7
8 MR. ROBERT STEWART

9 was called as a witness and, after having been first duly
10 sworn, testified as follows:

11 EXAMINATION

12 BY MR. McSHANE

13 Q Will you state your name for the record, please,
14 sir?

15 A Robert E. Stewart.

16 Q And what is your address?

17 A 2508 Ridgeview, Austin, Texas.

18 Q What is your occupation, sir?

19 A Banking Commissioner of Texas.

20 Q And how long have you occupied that position,
21 Mr. Stewart?

22 A Since July 1st, 1970.

23 Q Mr. Stewart, when were you first introduced to
24 the concept of insurance of bank deposits at the state
25 level?

1 A The first I heard of that was sometime during
2 early 1968. I was at the Sharpstown State Bank, talking
3 to Mr. Frank Sharp for a number of reasons. During the
4 conversation he mentioned the possibility of state
5 deposit insurance. He asked if I would be willing to work
6 with bankers, legislators, in developing such a program,
7 and I said, "I'll work with whoever comes along." That
8 was the first I heard of it.

9 Q Did he indicate at this time that he intended
10 to have this concept incorporated into legislation?

11 A He didn't say. He gave me no timetable. He
12 just said that he would like to see such a program.

13 Q Did you have any subsequent discussion with Mr.
14 Sharp concerning the concept of state insurance for bank
15 deposits?

16 A I don't believe it was ever mentioned by him
17 again in my presence.

18 Q All right. Mr. Stewart, when did you first
19 learn that this concept had in fact been incorporated into
20 legislation or bills before the House?

21 A We heard of such a bill that had been introduced
22 in the first special session in 1969, but we never heard
23 any more about that bill except that it had died in
24 committee and had never been voted on. Later we found that
25 a bill had been passed during the second special session.

1 Q This would be House Bills 72 and 73 in the
2 second called session of the Sixty-firstst Legislature?

3 A I'm not familiar with those numbers. I'm sure
4 that must be right.

5 Q Sir, is it your testimony that you were not
6 aware of these bills until they had already been passed?

7 A Well, we were aware of the first bill after it
8 was introduced. Then we were aware of the second set of
9 bills after they were passed. Yes.

10 Q Did you take any action on these bills when you
11 became aware of the fact that they had been passed?

12 A We immediately attempted to gain copies of those
13 bills so that we could review them and see what they said.
14 We did get copies, and studied them, and as a result of
15 that, we presented our findings to the Finance Commission
16 of Texas, which fortunately was meeting that very weekend,
17 I believe. The Finance Commission instructed Mr. Falkner
18 to write a letter to the Governor, asking him to veto the
19 bills.

20 Q Could you basically outline the reasons for this
21 opposition to the bills?

22 A I had felt all along that such a concept could
23 not work unless it had the support of the State of Texas
24 behind it. I thought that it had to have the full support
25 of the State in order to gain public confidence. So,

1 we objected to the feature which would allow these non-
2 profit insurance corporations to be established for the
3 insuring of deposits.

4 Also, it appeared to us that through this bill,
5 or through this law, a bank could withdraw from the F.D.I.C.
6 insurance program and have its deposits fully insured from
7 \$1.00 to \$100,000.00 by these small corporations, or by
8 these insurance corporations.

9 We also felt that the bill was not specific
10 enough in providing for regulation of banks under the
11 insurance program. I believe all these reasons were
12 set out in Mr. Falkner's letter to the Governor.

13 Q All right, sir. Are you an attorney?

14 A No.

15 Q Did you, when you secured copies of these bills,
16 submit copies to an attorney on your staff for review?

17 A Yes.

18 Q And was it that attorney's opinion that, as
19 drafted, these bills would permit a state bank to withdraw
20 from F.D.I.C.?

21 A Yes, it was.

22 Q In addition to the letter you have just outlined,
23 were there any additional attempts on the part of your
24 Department to cause the veto of the bills?

25 A I believe immediately after we found out that the

1 bills had been passed, at some point between our dis-
2 covery and our presentation to the Finance Commision, Mr.
3 Falkner, I believe, did call the Governor and ask him not
4 to sign the bills until we had had a chance to analyze
5 them.

6 Q All right, sir. Do you know if any representa-
7 tive of your Department was present at the Committee hearing
8 held on the bills in the House?

9 A To my knowledge, there was not. I never heard
10 of it if there was anyone there.

11 Q Were you contacted about the bills by any member
12 of the Legislature?

13 A Once, in a conversation, I believe, in late
14 1968, I was having a conversation with Speaker Mutscher
15 about other matters, and this was casually mentioned.
16 And I believe the Speaker asked if the Banking Department
17 or I, as a representative of the Department, would be
18 willing to work with some committee appointed by the
19 Legislature in the development of a state deposit insurance
20 program. I said we would do everything we could. But there
21 was nothing more said.

22 Q Did you have occasion to discuss the bills with
23 any other member of the Legislature?

24 A No.

25 Q Mr. Stewart, do you have any personal knowledge

1 of any misconduct on the part of any public official in
2 regard to the introduction and passage of these bills?

3 A I don't. No.

4 Q Mr. Stewart, could you give us a brief summary
5 of the events leading to the granting of Sharpstown
6 Bank's application for bank charter?

7 A Yes. I have them. That charter was originally
8 filed in our office on October 16th, 1959, and was later
9 amended and refiled on January 18, 1960. I believe the
10 final action on granting the charter was taken by the
11 Banking Board.

12 Q And who was on the Banking Board at that time,
13 sir?

14 A The Board then consisted of the Attorney General,
15 the State Treasurer and the Banking Commissioner. That
16 would have been Attorney General Will Wilson, State
17 Treasurer Jesse James, and Commissioner Falkner.

18 Q All right, sir. Now, prior to the granting of
19 any application for a bank charter, is it the practice of
20 your Department to conduct an examination as to the merits
21 of that application?

22 A Yes, it is.

23 Q Was there in fact such an examination conducted
24 in this application?

25 A Yes.

1 Q Who conducted that examination?

2 A State Bank Examiner Charles Wegner. W-E-G-N-E-R.

3 Q Could you give us the basic thrust, or his con-
4 clusions in that examination?

5 A His report of his investigation was generally
6 unfavorable. His recommendations to the Board were that
7 there was no public necessity and that the volume of
8 business was not such to indicate the support of a bank.
9 He had no problem with the capital adequacy, the experience
10 of management and the good faith of the applicant.

11 Q Now, Mr. Stewart, these factors that you have
12 just mentioned, public necessity, capital adequacy,
13 adequacy of business, experience and management, good
14 faith of applicant, are these the five statutory criteria?

15 A Yes. The Board must find favorably on all
16 these factors in order to grant a charter.

17 Q Does the decision of the Board on these statutory
18 factors have to be unanimous, or can a majority--

19 A It can be a majority vote.

20 Q Would you relate for the Committee the vote of
21 the members of the Board on these statutory factors in
22 relation to the application of the Sharnstown State Bank?

23 A Attorney General Wilson voted, "Yes," on all
24 factors. State Treasurer James voted "Yes," on all five
25 factors, and Deputy Commissioner Bingston, acting for Mr.

1 Falkner, voted "No," on all five factors.

2 Q Does it happen often that a bank charter is
3 granted in the face of adverse votes by the representative
4 of your Department?

5 A It's not uncommon.

6 Q Mr. Stewart, are you familiar with what is now
7 known as Attorney General's Opinion Number M-82?

8 A Yes.

9 Q Could you describe for the Committee the
10 events that lead to that Attorney General's Opinion?

11 A The Sharpstown State Bank was operating in
12 leased quarters, leased from Sharpstown Shopping Center,
13 as the ground floor and, I believe, mezzanine floor of a
14 ten-story building in the Center.

15 Mr. Sharp approached Mr. Falkner with the idea
16 of increasing the capital structure of Sharpstown State
17 Bank and that as a part of that increase, his idea was
18 to allow the bank to purchase from the Sharpstown Realty
19 Company the ten-story building and certain adjacent
20 properties, including another building rented to, I
21 believe, Battlesteins, and then some mall area around the
22 building.

23 Q Was this adjacent property of the Sharpstown
24 Center?

25 A Adjacent to the ten-story building in the Center.

1 Q I see. Go ahead.

2 A Mr. Falkner and I both discussed this with Mr.
3 Sharp and stated our feeling that, (1), there was not
4 enough true deposit potential in the Sharpstown area in
5 the immediate future to support the kind of capital that
6 Mr. Sharp wanted to put in the bank. We also stated that
7 we did not believe that the purchase of the adjoining
8 real estate, the adjoining buildings, would be legal under
9 the Texas Banking Code.

10 Q Would you describe, basically, what would have
11 made it illegal under the Code?

12 A The Banking Code allows a bank to own its own
13 property for the purpose of owning its building. The
14 only other way a state—or two other ways a state bank can
15 own real estate is either through purchase for expansion
16 of existing facilities, or through foreclosure on a debt
17 previously contracted. We felt that since the bank would
18 be operating only in the ten-story building, that that was
19 the only real estate the Sharpstown Bank would be allowed
20 to own, under the law.

21 Q And was it the contention of Mr. Sharp that
22 since the adjacent property was in some way connected to
23 the bank, that that would actually be a part of the bank's
24 domicile?

25 A Yes. He contended that the Center—these

1 particular buildings that we're talking about--was under
2 a common roofline, I believe. I think that was his con-
3 tention, that they were under the same roof, obviously
4 with the exception of the ten-story building, and that
5 therefore they were the same property, the same building.
6 Mr. Falkner and I felt differently.

7 Q Who was representing Mr. Sharp at this time?

8 A As my memory served, it was ex-Attorney General
9 Will Wilson.

10 Q And who requested the Attorney General's
11 Opinion?

12 A Well, of course, Mr. Falkner requested the Opinion,
13 from the Attorney General, but I don't know who prompted
14 him to do so. I don't know whether it would have been
15 Mr. Wilson, or Mr. Sharp, or his own idea. But at any
16 rate, he did request the Opinion.

17 Q And is it a fair statement of the Opinion that
18 the Opinion does consider this entire package joined by
19 a common roof, a part of the bank's domicile, or the bank's
20 domicile?

21 A Yes. I do know that an assistant from the
22 Attorney General's office went to Houston and looked the
23 situation over and looked at the facilities and did
24 determine for himself and wrote in the Opinion that it was a
25 for legal investment; that this was one building.

1 Q Mr. Stewart, in November, 1970, did you have a
2 call or a conference from Dr. Elmer Baum regarding the
3 Sharpstown State Bank?

4 A Yes. I had a very brief conversation with him
5 about it.

6 Q What was the substance of that?

7 A He called me at my motel in Houston and asked
8 how things were coming. I told him I didn't know, that
9 I would be able to say in the morning. He said, "Well,
10 remember, Frank's a friend." Or something like that.

11 I'd like to make a statement on that, if I may.
12 At that point, and in the weeks prior to the examination
13 in November, I was getting so many phone calls and so
14 much advice from prominent bankers in the Houston area
15 and from citizens in Houston, if I had followed it all,
16 I would still be going in circles. I attached no real
17 significance to that phone call, or to any other phone
18 calls. I finally decided to go ahead and do exactly what
19 I thought I had to do, and hope that that was what someone
20 had advised me, so I wouldn't make everyone mad. But I
21 think it's been overplayed, quite frankly.

22 MR. McSHANE: Mr. Chairman, I pass the witness
23 at this time.

24 CHAIRMAN MURRAY: Mr. Nugent?
25

1 BY MR. NUGENT

2 Q Mr. Stewart, somewhere along the line I have
3 been informed that you and some of your people went and
4 talked to the SEC prior to the time they filed their law-
5 suit, and told them the bank was under very strict
6 operation at that time and that you all thought the bank
7 could be saved, and you discussed this with the SEC. I
8 wonder if you would lay this out for me, if that be true,
9 as fully as you can so I'll understand what occurred.

10 A All right, sir.

11 I had heard for several weeks, several months
12 as a matter of fact, that the SEC was making some sort of
13 an investigation. This was in late 1970. I had not been
14 contacted in any way by SEC people on their investigation.
15 I don't remember exact dates, so I'll give you days, if I
16 may. I remember that on Thursday, the Thursday prior to
17 January 18th, when they filed their lawsuit, I received a
18 phone call from F.D.I.C. Supervising Examiner Quintin
19 Thompson in Dallas. Mr. Thompson told me that they had
20 that day been informed that the SEC was planning to file a
21 lawsuit involving Sharpstown State Bank. I asked if I
22 might be given an opportunity to look at the complaint.

23 On Friday, Mr. Thompson called back and said
24 that the SEC had agreed to meet with representatives from
25 the Banking Department and the F.D.I.C. on Monday, January

1 18th. So I presented myself in Fort Worth at their
2 offices on Monday morning about 11:00 o'clock. We were
3 there the rest of the day. We talked to them about their
4 complaint, and did get them to make some small amendments
5 to the complaint, which we felt would have been detrimental
6 to all the banks involved.

7 But that is basically it, sir. The suit was
8 filed that afternoon, as you well recall.

9 Q All right. Did you in any way indicate to them
10 that with the supervision you were then giving the bank
11 that you might be able to protect some of the depositors
12 and shareholders if the suit wasn't filed?

13 A We told the SEC—by "We," I mean Quintin
14 Thompson and myself. We did tell the SEC that we felt
15 that we had taken steps in November, and had further steps
16 planned, which would prevent the failure of Sharpstown
17 State Bank.

18 I don't recall that we asked them to not file
19 the suit. We just asked them to soften their references
20 to these various banks.

21 There is no way that we could have stopped them
22 from filing the suit, but we were successful in getting
23 them to change their language a little.

24 It was our contention that the steps we had
25 taken in November were sufficient to protect the bank from

1 failure, until such time as we could finalize other steps
2 and get the bank back into proper operating condition.

3 Q Is it your feeling now that you could have
4 saved this bank and the loss to the people involved?

5 A Yes, sir, it is. As a matter of fact, I dis-
6 cussed this with—well, I'll let Mr. Thompson speak for
7 himself. It is my feeling that we could have saved the
8 bank.

9 Q And if you had of saved the bank, none of the
10 depositors would have had any losses in that area?

11 A That's correct. If we had been able to save the
12 bank. You must understand that there are a number of
13 things that could have happened, but we felt that we were
14 acting to prevent these things. So long as we were
15 successful in what we were doing, we would have saved the
16 bank. Yes, sir.

17 Q Well, have you been in somewhat a similar
18 position in other banks that you have been able to
19 shepherd back into a sound financial condition without
20 loss to the public?

21 A Yes, sir.

22 Q Do you do this rather constantly?

23 A If you say, "constantly," you're going to
24 destroy the faith of the people in the banking system. It
25 happens.

1 Q Let me rephrase that. Have you been able to
2 take banks who were errant in following the rules, and
3 get them back on the line in the past?

4 A Yes, sir, we do that. We have been successful
5 at it in a number of occasions. The only ones we were
6 not successful in, you read about in the paper, or you
7 will read about in the paper. You don't read about the
8 ones we save.

9 Q Do you save more than you lose?

10 A By far more.

11 Q Could you give us some odd figure, four or five
12 to one, or some such?

13 A If I might use this as an example, we have had
14 four instances this year in which we have tried to take
15 these preventive measures, or corrective measures. We
16 have been successful in every case but one, and this is
17 the one we're talking about today.

18 Q Was there any way that you could have operated
19 with the F.D.I.C., or whoever was involved, in some manner
20 other than that in which it did occur, that could have
21 saved this bank?

22 A Yes. We were working very closely with the
23 F.D.I.C. If you read the examination report supplied by
24 the F.D.I.C. and our people, you will find them to be
25 almost identical, and our recommendations certainly were

1 discussed and were given as one recommendation rather
2 than a set of two. I think, yes, we could have worked
3 with the F.D.I.C., and they could have worked with us
4 and we could have saved the bank.

5 Q Looking at it from where you sit now, what
6 could have been done to save this loss to the people who
7 were involved in this bank?

8 A Well, I have already stated that I'm not an
9 attorney, so I don't know what the SEC might have done to
10 take the bank's name out of the picture. I thought that—
11 well, quite honestly, I thought that their reference to
12 the various loans made by the Sharpstown Bank was totally
13 uncalled for, because that is what brought the attention
14 of the public to the bank and made it look so bad.

15 Q Which loans are you referring to?

16 A The loans to the various political figures in
17 the State.

18 Q Now, do you have any knowledge of any recordings
19 or tapes that were made of any conversations by the Bank
20 Examiners or others who might have been meeting or working
21 in the Sharpstown State Bank, or bank building?

22 A Yes, sir. It was discovered after the bank was
23 closed that there was recording equipment, I believe, in
24 Mr. Sharp's office, that was attached to microphones in
25 what had been the bank's old board room on the mezzanine.

1 I did hear a recording, including my voice, a conversa-
2 tion I had with Quintin Thompson, that was taken from the
3 machine attached to those microphones. That's the only
4 one I know of.

5 Q Do you know whether or not there were any
6 recordings made of what I understand is the confidential
7 conversations of members of the F.D.I.C. examining team
8 and your examining team had from time to time in the
9 bank building when they were working on the bank records?

10 A I don't know that. I haven't heard any such
11 tapes. I haven't had them presented to me. The only
12 tape I am aware of personally is the one that I did listen
13 to. That was a conference between—our examiners were in
14 the room, of course, but it was primarily a conference
15 between Mr. Thompson and myself.

16 Q Do you know whether or not any other tapes
17 exist?

18 A No, sir, I don't.

19 Q And if so, where they might be?

20 A I have no idea.

21 Q Well, the equipment that produced the one tape
22 you do know of, was adequate to produce other tapes if
23 there had been other conversations in that room?

24 A I'm sure it was. Yes.

25 Q Do you know whether or not this equipment, this

1 recording equipment extended to rooms other than just
2 that one?

3 A The only connection I know of is just that one
4 room.

5 Q Do you know who removed this recording equip-
6 ment from these rooms in the bank?

7 A Yes. The Federal Bureau of Investigation.

8 Q Our testimony yesterday, I believe, if I recall
9 it correct, was that other conversations had been taped
10 and that the FBI had them. Do you have any knowledge
11 that might be helpful to us in relation to who has these
12 tapes, where the equipment is, in order that we might
13 chase it and try to become acquainted with it?

14 A I'm sorry. The only tape I know of is the one
15 I heard. That certainly doesn't necessarily mean there
16 were no other tapes, but that's the only one the FBI has
17 told me about.

18 Q Let me ask you one further question.

19 Is there anything in your opinion the Legislature
20 could do in revising, changing or reordering the bank
21 laws and the bank examination laws, that would give you
22 additional power and perhaps purpose, to see that banks
23 don't get in this bad a shape before you can take them
24 over or redirect their operation?

25 A Well, this past session took some long steps

1 toward just that. We were given some law providing for
2 closer supervisory authority over banks in trouble. We
3 can now step into a bank and place it in conservatorship
4 and actually run it ourselves. We can limit the bank's
5 activities in brokered certificates of deposit. We have
6 stronger, better, officer-removal authority. We were
7 given substantial law by the last session of the
8 Legislature which will aid us tremendously.

9 I don't think that it will totally prevent
10 bank failures. I don't think there is any way you can
11 do that. Too many things can happen too suddenly, but
12 I certainly think it will give us the authority we need
13 to step into a problem bank situation and get it
14 corrected before it's fatal.

15 Q Well, is there any particular way within your
16 knowledge, or your experience, that we could reorder and
17 establish laws in such a way that we won't have bank
18 failures, and thereby protect the people of the State of
19 Texas from these catastrophies?

20 A Well, going back over the reasons for bank
21 failures in recent years, several of them have been
22 broken by major defalcations. So, I think, we have
23 already said it's against the law to steal from a bank.
24 That doesn't seem to stop it from happening. Of course,
25 other instances have related to self-dealing by the bank's

1 management and director personnel. You could pass a law
2 to say that the directors cannot borrow or the officers
3 cannot borrow from their own bank, but you would limit
4 the ability of a lot of good people to borrow from their
5 own bank, legitimately.

6 Quite honestly, I think with these new bills,
7 we should be able to take care of almost any situation,
8 provided we get enough time. And by "enough time," I
9 mean as much as a week's notice, or something.

10 Q Let me ask you this question.

11 Do you, of your knowledge or as a result of any
12 investigations in which you have been involved, know of
13 any particular companies being set up by the Sharpstown
14 Bank more or less for the specific purpose of lending
15 money to Federal or State Bank Examiners?

16 A There was an instance. An officer of the Sharps-
17 town Bank, Douglas N. Lane, organized a small corporation
18 called D. N. Lane Enterprises, Incorporated. Through this
19 corporation he made several investments, made several
20 purchases of stock, and he did make loans to certain
21 State and F.D.I.C. Bank Examiners through this corporation
22 That's the only one I know of.

23 Q Have you checked out those loans that were made
24 to State Bank Examiners, or former Bank Examiners?

25 A Yes.

1 Q Or are you in the process of doing that at this
2 time?

3 A Well, it was done the day after we found out
4 about it. We were informed of this company's activities
5 on Wednesday afternoon. Thursday my Departmental
6 Examiner went to Houston, investigated it, Friday he came
7 back and reported to me, and Monday we asked these people
8 to resign. This was all back in November of 1970, now.
9 But we took immediate action on it and we're through with
10 it now. The FBI has all our files on it. We turned
11 everything over to them.

12 Q In the course of this examination, did you also
13 find that loans had been made to the Federal Bank
14 Examiners, the F.D.I.C. people, this type of thing?

15 A There were some F.D.I.C. Examiners involved.
16 Yes, sir. I don't remember just how many.

17 Q Do you know whether or not they took action on
18 this?

19 A Yes. When I discovered it, I immediately
20 notified Quintin Thompson, and from the information we
21 had, gave them the names I had. He took action as promptly
22 as we did.

23 Q Is there anything the Legislature might give
24 you, in the way of statutory authority, or additional
25 direction, that could possibly protect us from this type

1 of activity, or is that just one of the human frailties
2 we have to operate under?

3 A I'm afraid it is. Of course, you could increase
4 the penalty provisions.

5 Q We've done that in marijuana and it hasn't done
6 much good.

7 A As the law now stands, we have to be able to
8 prove that an examiner has knowingly violated the law.
9 Which in this case we felt was not true. We felt that
10 these people had been misinformed by Mr. Lane about how
11 the transactions were being handled.

12 We did discuss the matter with the Harris
13 County District Attorney's office after our investigation
14 was complete, and he pointed out that the two things that
15 could happen to a man for violating that law were: loss
16 of employment and conviction of a misdemeanor or a fine of
17 up to \$200.00, I believe. He pointed out that the most
18 terrible thing that could happen to a man was the loss of
19 his job, and these people had already experienced that,
20 so he recommended no further action.

21 Q From your examination of this situation, the
22 Lane Company, and all of the surrounding facts and every-
23 thing, would it be reasonable to assume that this was
24 brought about through the activities of Mr. Sharp, or at
25 his direction or instance?

1 A It's quite possible that Mr. Sharp might have
2 known about it, but I can't say from what I know about the
3 situation that he initiated these loans. We have never
4 found anything to indicate that it was anything other
5 than a personal friendship and contact with Douglas Lane
6 and the Bank Examiners involved. You see, Douglas Lane
7 had at one time been employed by our Department and had
8 made numerous friendships on the force. He continued
9 that friendship in the Houston area after he left the
10 force and went into the Sharpstown Bank.

11 Q Well, what was Mr. Lane's relationship with
12 Mr. Sharp?

13 A He was employed by the Sharpstown State Bank as
14 a Vice President.

15 Q Then at the time the D. L. Lane Corporation was
16 operating and making these loans, he was an officer of the
17 Sharpstown State Bank?

18 A Yes.

19 Q In other words, he was employed by Mr. Sharp?

20 A Yes.

21 Q Was there any benefit accrued to the bank in
22 any way that you could tell, as a result of these loans
23 having been made through this company to the Examiners?

24 A They earned interest on the loans.

25 One other. We have suspected for some while

1 that a loan at this time--personnel in Sharpstown Bank
2 were being informed of the examination dates. They knew
3 when we were coming. This suspicion is supported, because
4 the loans to D. N. Lane, Incorporated, through which he
5 made loans to our Examiners, would be transferred from
6 Sharpstown State Bank to other banks, sold with repurchase
7 agreements, shortly before an examination date, and
8 would come back into the bank shortly after the Examiners
9 left. And we suspected for some while that the bank was
10 being informed of our visits, or the date of our visits.

11 Q Were you ever able to substantiate that, other
12 than from these observed activities?

13 A No one has ever admitted it. No, sir. We have
14 never been able to prove it.

15 Q Who in your Department would be in a position
16 to inform a bank several days or weeks ahead of time as
17 to a projected examination date?

18 A A number of people. Of course, anyone in the
19 office could find out simply by looking at the schedule
20 pad when a bank was to be examined. We notify our
21 Examiners monthly of their examination schedule for the
22 following month. Those letters go out to every Examiner
23 whose name is mentioned in the letter, so that we might
24 directly write one Examiner, and involve five others in a
25 examination, and copies would go to all five. So there

1 would have been a number of people on our force and on
2 the F.D.I.C. force, who could have had this information
3 available to them.

4 Q Was there one consistent person through all of
5 these various examinations who appeared on that examination
6 each time?

7 A No. Well, now, wait a minute. Not on our
8 force. I don't know about the F.D.I.C.

9 Q Well, do you inform the F.D.I.C. of your
10 examination dates at any time?

11 A Yes. We make 200 or 300 examinations concurrently
12 each year. Also, in order to avoid scheduling confusion,
13 where we might have—well, we have had Examiners start an
14 examination of a bank on Monday morning, and Wednesday
15 morning the F.D.I.C. Examiner would walk in to examine a
16 bank. So, to prevent that type of thing, we notify the
17 F.D.I.C., and they, in turn, notify us.

18 Q So then the lead could have come from either
19 the Feds. or the State?

20 A Yes, sir.

21 Q Do you know whether or not the Feds. are checking
22 into that also?

23 A They are.

24 Q How beneficial is it to a bank to know a week
25 or two weeks ahead of time that they are going to be

1 examined?

2 A It could be very beneficial. If a bank is what
3 we call a "problem bank," if they can get as much as a
4 week's notice of one of our examination dates, they can
5 correct a lot of problems in a week's time. For example,
6 if they have a loan that they know the Examiner will
7 criticize, they can persuade some friendly bank, some
8 other bank, to buy that loan from them on a repurchasing
9 agreement, so that the minute the Examiners leave, the
10 originating bank repurchases the loan. If there are money
11 shortages in the bank, they can be temporarily covered so
12 that when the Examiner walks in and counts the cash, it's
13 all there.

14 There are a number of things that can be
15 corrected by a bank if they know exactly when the
16 Examiners are coming.

17 Q Yes.

18 A For this reason. We're on an eight-month
19 examination schedule. We're supposed to examine every State
20 bank Texas each eight months. Obviously we could fall
21 into a rut where we are examining almost exactly on an
22 eight-month schedule. For this reason, we shuffle our
23 banks around. We might examine one as much as two months
24 out of line sometimes, just to keep them from finding a
25 pattern.

1 Q Does this also make a difference in the amount
2 of capital that they might have at that particular time?

3 A It might make a difference in the amount of
4 capital we might demand at that time.

5 If they were able to participate or to sell a
6 substantial number of problem loans, which they know would
7 be charged off against their capital fund, and which we
8 would then demand be replaced, then they could sell those
9 loans out for a period of two weeks, and make the bank
10 look that much better, and the capital probably would not
11 be questioned.

12 CHAIRMAN MURRAY: Any other questions?

13 Mr. Hale?

14 BY MR. HALE

15 Q Mr. Stewart, I'd like to explore just a little
16 bit further with you your comments about the initial
17 relationship of the SEC in the closing of the Sharpstown
18 Bank.

19 Now, you mentioned a conference that was
20 scheduled in Dallas on a Monday.

21 A At Fort Worth.

22 Q This was before the lawsuit was filed?

23 A It was the same day.

24 Q The SEC filed its lawsuit that afternoon?

25 A That's right. And we were there beginning about

1 11:00 o'clock that morning.

2 Q And were the State Examiners at that time in
3 the process of an examination of the Sharpstown State
4 Bank?

5 A Yes. We had just started an examination that
6 Monday morning.

7 Q And how about F.D.I.C.?

8 A They were also examining the bank.

9 Q Was it a joint effort, or do they operate
10 independently on these examinations?

11 A No, we examine on what we call a "concurrent
12 basis," where each force is responsible for its own
13 report, but we share the workload.

14 Q Now, was it your opinion at that time that the
15 SEC filing of a lawsuit would be damaging to the bank?

16 A Yes, sir. I thought it would.

17 Q Was there any effort made to prevent the SEC
18 from filing that lawsuit at that particular time?

19 A I don't know that we attempted to talk them out
20 of filing the suit. I don't know that we tried to say,
21 "Don't file it."

22 Q Did you point out to them what was likely to
23 happen if they did file the lawsuit?

24 A I told the people in the meeting that, in my
25 opinion, if the suit was filed in its present form, that

1 the Sharpstown Bank would not be open by the end of the
2 month.

3 Q And at that particular time, you still enter-
4 tained the hope and belief that, left alone, you could
5 work out the difficulties with the Sharpstown State Bank?

6 A Yes, sir.

7 Q And is it your opinion that the lawsuit itself
8 triggered a chain of events which made that impossible?

9 A That's my opinion.

10 Q Had they delayed the lawsuit, for instance, and
11 given you some more time, we might still have a Sharps-
12 town State Bank operating and nobody would have had these
13 big losses, the depositors and the stockholders?

14 A I think that is very probable. There were
15 factors which could of brought about the failure of the
16 bank, but we thought that we had them under control.

17 Q Of course, the minute the SEC filed that law-
18 suit, people started withdrawing their deposits, I
19 presume, didn't they?

20 A Yes, sir. In droves.

21 Q And then maybe is it what you call a "run on the
22 bank?"

23 A It was a run. Yes, sir.

24 Q It was a run on the bank. Of course, as these
25 deposits went down, that impaired their whole capital

1 structure and their loan capacity.

2 A It didn't hurt their capital structure. They
3 could not liquidate their loans fast enough to pay their
4 depositors. And the state law says that when a state
5 bank cannot meet the demands of its depositors, it is
6 insolvent. There are two ways of being insolvent, one
7 through capital elimination, and the other through the
8 inability to meet the demands of the depositors. These
9 demands were coming in so fast and in such large amounts
10 that there was no way that the bank could provide the
11 cash to pay those deposits.

12 Q So to some extent, then, the SEC's timing of
13 its lawsuit is going to create a situation where it has to
14 share at least part of the blame for the debacle of the
15 Sharpstown State Bank.

16 A I think their lawsuit, and the resultant pub-
17 licity, no doubt brought about the closing of the bank.

18 MR. HALE: Fine. Thank you.

19 CHAIRMAN MURRAY: Mr. Haynes has a question.

20 BY MR. HAYNES

21 Q Mr. Stewart, you mentioned earlier, among some of
22 the reasons for failures of banks, was "self-dealing," I
23 believe is the phrase you used. And was one of the reasons
24 that Mr. Wegner, the Banking Examiner, gave for recommend-
25 ing that the charter for Sharpstown State Bank be not

1 granted back in 1960, was the fear that there could
2 possible occur self-dealing within this bank, because it
3 was too closely held by members of one family, or the
4 members of closely-associated business associates?

5 A Yes, sir. His report indicated that opinion.

6 Q This was one of his biggest fears, apparently.

7 A Yes, sir.

8 Q And his recommendation that it not be granted.

9 A Yes, sir.

10 MR. HAYNES: Thank you.

11 BY CHAIRMAN MURRAY

12 Q Mr. Stewart, this business about banks being
13 able to transfer bad loans to another bank temporarily,
14 and then after examination, take it back, how can we stop
15 that? Have you authority, by some rule-making power, to
16 stop it, or would we have to pass a law to that effect?
17 Could we require them, or could you, as the head of the
18 banking group, require banks to report to you all loans
19 made in the last thirty days, and purchased back within
20 thirty days after the bank was examined?

21 A Of course, we could make that requirement, but
22 that wouldn't mean that they would report the ones to us
23 that they didn't want us to know about.

24 I think very likely, through our examination
25 process, and through cooperation with other agencies,

1 federal agencies, if we can find that a bank has done it
2 once, then we can usually prevent it from happening again,
3 just through the normal power that the Banking Department
4 has.

5 Q My thinking was, instead of making you fellows
6 dig and dig and dig, and try to find these things that
7 they're doing, make them report this thing to you, and
8 if they don't report it, give them a stiff penalty.

9 A Well, of course, that's one possibility.

10 Q But you think it would have to be done by
11 legislative enactment, and no power that you people have?

12 A Well, I would have to explore that. The Finance
13 Commission of Texas, the Banking Section, which directly
14 works with the Banking Department, was given rule and
15 regulation making authority by the last legislative
16 session. Now, it is entirely possible that under the
17 authority granted there, they might have that power. I'll
18 explore it and find out.

19 Q I wish you would, and report back to us if you
20 will, please.

21 A All right, sir.

22 CHAIRMAN MURRAY: Any further questions?

23 MR. NUGENT: I have one.

24 CHAIRMAN MURRAY: Mr. Nugent.
25

1 BY MR. NUGENT

2 Q Sir, is there, to your knowledge, a reasonable
3 way in which we could approach the idea of setting up a
4 state institution of some character to additionally
5 insure the deposits of all depositors in the State of
6 Texas in our state banks in excess of the \$15,000.00
7 limit, I believe, of F.D.I.C.?

8 A Yes. It is \$20,000.00 now.

9 I believe it can be done. The Finance
10 Commission appropriated certain funds from the Banking
11 Department and the Savings and Loan Department, I believe,
12 in June of this year. They appropriated certain funds to
13 be used by a committee appointed for the purpose of
14 exploring the deposit insurance question, to see whether
15 or not there is some way of drafting a law by which the
16 state, or some state agency, could provide deposit
17 insurance in excess of the F.D.I.C. I can think of ways
18 that it might be done, that I haven't been asked to
19 express, and I'm going to wait until I am. But I think it
20 could be done.

21 Q You're in a position right now of being asked
22 to express it, Mr. Stewart.

23 A I see.

24 I think it would have to have the full support
25 of the State. I think that quite possibly an agency could

1 be established which would have the authority to borrow
2 from the State whatever funds it needed to cover depositor
3 losses until it was able to accumulate its own funds,
4 through assessments for premiums, so that the State would
5 get its money back over a period of time. But I think
6 that the people of this State are going to have to know
7 that the State is behind it. I don't believe that you
8 could generate the type of faith in a commercial or a
9 private enterprise which the people would have in the
10 ability of the State to do what it says.

11 Q In other words, what you're saying is, initially,
12 the full faith and credit of the State would have to be
13 behind this type of operation?

14 A Yes, sir. For example, the F.D.I.C. still has
15 the authority to borrow from the Treasury any funds it
16 happens to need. But it has accumulated, over the thirty
17 odd years that it's been in business, it's accumulated
18 over, well, approximately three and a half billions of
19 dollars in total reserves. So it's not likely that it will
20 ever have to call on them. Of course, it assesses from
21 something like 14,000 banks. There would only be
22 approximately 700 available, if all 700 wanted to partici-
23 pate.

24 Q Say that only 500 of the banks in Texas wanted
25 to participate. Would that be enough to support such a

1 fund by an assessment of some reasonable nature?

2 A It would be pretty hard. The assessment would
3 have to be pretty high, I'm afraid. Certainly, I think
4 if—well, obviously the best way to prevent depositor
5 loss in a bank is to keep it from failing. So, if you
6 could have some sort of a system whereby—possibly a
7 state agency could be created which would temporarily
8 buy problem loans from a bank with the understanding that
9 the bank would buy those loans back from the State, or from
10 the agency, as earnings permitted. As I say, there are
11 ways. There are a number of ways it could be done.

12 Q If we raised this insurance, say, to fifty or
13 a hundred thousand dollars, do you think that would take
14 care of, say, the greater proportion of the losses suffered
15 by individuals in these banks?

16 A Oh, yes, I believe so.

17 Q Which figure do you think would take care of the
18 major mass losses involved?

19 A Probably the most money that is lost would fall
20 under the fifty thousand category. But the people who
21 lose more than a hundred thousand feel that they are
22 suffering the most major loss. But I think up to \$50,000.00
23 would cover the vast majority of depositors. We have
24 now approximately, oh, say nine and a quarter or nine and
25 a half billions of dollars on deposit in the state banks in

1 Texas. We haven't really conducted any search—we haven'
2 been asked to—to find out how much of that total would
3 fall within a category of up to fifty thousand, or up to
4 a hundred thousand.

5 Q Is there some way we could get that information?

6 A Yes, sir. It could be obtained through examina-
7 tion, but it would take us eight months to get around to
8 all the banks. We could impose on the banks the burden
9 of reporting to us. But we might not be able to depend
10 entirely on the accuracy of their information.

11 MR. NUGENT: Thank you, sir.

12 CHAIRMAN MURRAY: Any other questions?

13 Mr. Haynes, a very short one.

14 BY MR. HAYNES

15 Q Mr. Stewart, along the same line of questioning
16 that Mr. Nugent was pursuing, you made the statement that,
17 provided the banks wanted to participate in extra
18 insurance. Would it be too harsh a thing if a statute
19 were to be enacted to require that they participate, more
20 especially where state funds were on deposit in various
21 banks, in your opinion?

22 A I don't believe you can use state funds as a
23 criteria, because the banks holding state funds have all
24 pledged their assets, portions of their assets, to
25 secure the state, so that regardless of what amount of

1 money the state has on deposit in the bank, it won't lose
2 when the bank closes.

3 Q I see.

4 A It might be, at least at first, it might be
5 harsh to demand membership in such, or association with
6 such an agency, since the banks are already having to
7 pay F.D.I.C. assessments. I think, too, the banks them-
8 selves would want to know that the agency is one in which
9 they can have faith. They would want to see it perform
10 in one or two instances before they became members. They
11 would want to know that they weren't holding out to the
12 public through their advertising something that they could
13 not deliver.

14 Q You had reference to a program—well, for
15 example, the state's credit is pledged behind the Veterans
16 Land Program, for example. It has worked pretty well for
17 the state. Is this something similar to what you had in
18 mind?

19 A It could be, yes.

20 Q I know we're going pretty far afield right
21 now, really.

22 A Yes.

23 MR. HAYNES: Thank you very much, sir.

24 THE WITNESS: Yes, sir.

25 CHAIRMAN MURRAY: Any other questions?

1 Mr. Hale?

2 BY MR. HALE

3 Q How much does the F.D.I.C. cost these banks?
4 You mentioned the cost factor on it.

5 A I'm sorry, I don't know that. I can find out.

6 Q Is it figured on a percentage of deposits?

7 A Yes. It's based on the average of deposits for
8 the preceding year.

9 Q Average daily deposits?

10 A No, it's not average daily deposits. I think
11 they average deposits on the call dates. You know, banks
12 are required to publish their statements and file with
13 the supervisory authorities the statement four times a
14 year. And on those four dates, I think, the average is
15 compiled.

16 Q You say you don't know exactly. Is it a pretty
17 heavy financial burden on the bank to be a member of the
18 F.D.I.C.?

19 A No. The burden has gone down in recent years.
20 Since the F.D.I.C. has accumulated a substantial fund,
21 they have been able to reduce their assessment.

22 CHAIRMAN MURRAY: Any other questions?

23 Thank you very much, Mr. Stewart. That will be
24 all.

25 (The witness, Mr. Robert Stewart, was excused.)

1 CHAIRMAN MURRAY: The Committee will stand in
2 recess until 2:00 o'clock this afternoon.

3 (WHEREUPON, at 12:40 p. m., the hearing was
4 recessed until 2:00 o'clock p. m.)
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1 THURSDAY, AUGUST 19, 1971

2 AFTERNOON SESSION

3 (The hearing was reconvened, pursuant to the
4 morning recess on August 19, 1971.)

5
6 CHAIRMAN MURRAY: The Committee will come to
7 order, please.

8 The Committee has had a request from Senator
9 Schwartz that a letter written by Senator Patman to him,
10 dated August the 17th, be read into the record. And
11 that is what we'll do at this time.

12 It is addressed to:

13 "Senator A. R. Schwartz, Room 129-B,
14 Capitol Building, Austin, Texas.

15 Dear Babe:

16 Pursuant to our conversation, I am writing
17 this letter to state my recollection about your
18 actions in the Senate during the consideration
19 on September 8 and 9, 1969, of H. B. No. 72 and
20 H. B. No. 73. I knew of no intended opposition
21 to the bills by you. I do not remember your
22 having a tag on either bill. In fact, I'm
23 strongly of the opinion that you did not tag
24 either bill. You did vote with me, as I believe
25 I had requested of you, that my tag to House Bill

1 72 not be removed. As you will recall, that vote
2 was 13 to 9 in favor of removing the tag, but
3 failed to carry because it lacked the necessary
4 two-thirds majority. Had the vote been 15 to 7,
5 the motion would have prevailed. As I recall, I
6 asked you to vote with me not to remove the tag
7 in order that I would have an opportunity to
8 learn more about the bill.

9 You offered an amendment to extend the
10 coverage of the bills to private and unincorporated
11 banks. I thought your amendment was offered to
12 both bills, but may have been offered to only
13 one. I know that it was adopted in at least one
14 instance.

15 I don't think you ever indicated any opposition
16 to either bill. However, I do think your position
17 was, according to my recollection, that if the
18 bills were passed, they should be applicable to
19 all banks. In other words, I thought your
20 position was that if depository insurance up
21 to \$100,000.00 was to be provided, it should be
22 available to all banks.

23 With best regards. Cordially yours,

24 Bill Patman."

25 Now, there was another matter in connection with

1 hearing. We had requested, besides Senator Wilson who
2 appeared here yesterday, we also requested ex-Senator
3 Jack Strong to appear. Well, Jack had some previous
4 arrangements or engagements for yesterday and today, and
5 could not be here. But he did make an affidavit which is
6 supposed to contain testimony that he gave before other
7 committees pertaining to this general subject matter.
8 And so at this time I'm going to ask Mr. Nugent if he
9 won't read Senator Strong's affidavit into the record.

10 Mr. Nugent.

11 MR. NUGENT: I have a signed affidavit in my hand
12 here. I will read it to you as it appears.

13 "THE STATE OF TEXAS)

14 COUNTY OF GREGG)

15 BEFORE ME, the undersigned authority, on this
16 day personally appeared Jack B. Strong, who after
17 being by me duly sworn, on his oath states as
18 follows:

19 My name is Jack B..Strong. I reside at
20 605 Noel Drive, Longview, Texas, 75601. I was
21 a member of the Texas Senate from January, 1963,
22 to January, 1971.

23 On September 8, 1969, during the morning
24 session of the Senate, I was notified that someone
25 wished to speak to me in the hall behind the

1 Senate Chamber. I went there and was met by John
2 Osorio. I do not recall anyone being with him.
3 He told me that he would like me to sponsor
4 House Bill 72 and House Bill 73 in the Senate.
5 This was the first time I had ever heard of
6 either bill. He said they had been included in
7 the special call by Governor Smith as an emergency
8 measure and had passed the House that morning
9 without opposition. He explained the bills
10 would permit the establishment of one or more
11 non-profit state corporations which could insure
12 deposits in banks between the amount insured by
13 the F.D.I.C. and \$100,000.00. He gave me
14 several reasons why the bills would be beneficial
15 to the state. Of the reasons given, I remember
16 two. First, he pointed out the terrific money
17 crunch being experienced in the country at that
18 time. He said there were various groups such as
19 pension funds, retirement funds, etc. which were
20 limited to making deposits only to the extent the
21 deposits were insured. For example, if one of
22 these pension funds had \$1,500,000.00 to put in
23 certificates of deposit, they would have to put
24 \$15,000.00 in each of 100 banks. Whereas, if these
25 bills were enacted they could put \$100,000.00 in

1 each of 15 banks in Texas, thereby helping to
2 draw substantially out-of-state deposits to
3 Texas banks. This would provide additional funds
4 to be loaned by Texas banks for the establishment
5 and expansion of business in Texas. He also
6 pointed out that people with large deposits
7 would be more willing to place them in smaller
8 banks if the deposits were insured to \$100,000.00,
9 thereby helping banks in smaller towns. He told
10 me the Banking Department would administer the
11 act and regulate any corporation organized
12 thereunder and that he had checked with them and
13 the Banking Department was willing to assume this
14 responsibility. I do not recall if he told me
15 who he had checked with at the Banking Department.
16 I assumed he had talked to Mr. Falkner. I
17 scanned the bills, they appeared to do what he
18 said they would do, and I agreed to sponsor them.
19 I did ask him why he had requested me to sponsor
20 the bills as I had not helped him on any legisla-
21 tion previously. He replied that I would under-
22 stand the monetary crisis and the potential benefit
23 to Texas banks as I was a director in a bank and
24 represented a predominantly rural area. I believe
25 he also said that Waggoner Carr, his law partner

1 who I had supported strongly in 1966 in his race
2 for U. S. Senator, suggested he talk with me.

3 I immediately went to Lieutenant Governor Barnes,
4 told him I had agreed to sponsor the bills,
5 asked him to refer them to the Counties, Cities
6 and Urban Affairs Committee so I could have
7 them floor reported, and requested he put me on
8 the list of persons to be recognized that after-
9 noon. He asked me what the bills did and after a
10 brief explanation he consented to my requests.

11 As I recall the bills were received from the
12 House after lunch, were referred to the Counties,
13 Cities and Urban Affairs Committee and were
14 tagged by Senator Patman. I moved to suspend
15 the tag rule, but failed to get the necessary
16 two-thirds majority. I then met in the Senate
17 reception room with John Osorio, Waggoner Carr,
18 and possibly a third party whom I do not remember.
19 I explained the status of the bills, that they were
20 dead unless Senator Patman withdrew his tags, and
21 that I felt his opposition was not to the merits
22 of the bills, but was directed at me personally.
23 I took no further action with regard to the bills.
24 The next morning I was advised, I think by Mr.
25 Osorio, that Senator Patman had agreed to withdraw

1 his tags and offer no further objection to the
2 bills if they would change sponsors. I readily
3 agreed to this and explained the status of the
4 bills to Charles Wilson who agreed to be sponsor
5 of the legislation. The next time I heard of the
6 legislation was when I received a call from the
7 Associated Press in January, 1971.

8 Following are a series of questions, which
9 might be pertinent to this matter and my answers
10 thereto:

11 QUESTION: Did Governor Smith ask you to sponsor
12 House Bills 72 and 73?

13 ANSWER: Neither Governor Smith, any member of his
14 staff, nor any one acting on his behalf directly
15 or indirectly contacted me concerning these bills.

16 QUESTION: Did Lieutenant Governor Barnes ask you
17 to sponsor or support House Bills 72 and 73?

18 ANSWER: Neither Lieutenant Governor Barnes,
19 any member of his staff, nor any one acting on
20 his behalf directly or indirectly contacted me
21 concerning these bills. In fact, as pointed out
22 previously, when I went to Lieutenant Governor
23 Barnes to request assignment of the bills to
24 committee and to be put on the list for recogni-
25 tion, he asked me what the bills were about and I

1 received the distinct impression he had never
2 heard of them before.

3 QUESTION: Did Speaker Mutscher or Representative
4 Shannon ask you to sponsor or support House Bills
5 72 and 73?

6 ANSWER: Neither Speaker Mutscher, Representative
7 Shannon, any member of their staffs, nor any one
8 acting on their behalf directly or indirectly
9 contacted me concerning these bills. I do not
10 remember any conversation with any member of
11 the House of Representatives or their employees
12 or associates in connection with these bills.

13 QUESTION: Did anyone else ask you to sponsor
14 or support House Bills 72 and 73?

15 ANSWER: No. Only John Osorio and possibly
16 Waggoner Carr as stated previously.

17 QUESTION: What is your relationship, if any, with
18 Frank Sharp?

19 ANSWER: To my knowledge I have never met Mr.
20 Sharp and have never knowingly had any dealings
21 or communications with him directly or indirectly.

22 QUESTION: Were you offered any inducement,
23 financial or otherwise, for agreeing to sponsor
24 House Bills 72 and 73 in the Senate?

25 ANSWER: No. Neither John Osorio nor any other

1 person directly or indirectly offered me any
2 inducement of any type, form or character to
3 sponsor, support or vote for House Bills 72 and
4 73. To elaborate further, I wish to state that
5 neither I, nor any member of my family, nor any
6 company with which I am connected, nor any one
7 acting on my behalf or for my benefit has within
8 my knowledge ever done any of the following:

9 (1) owned, been offered, or been advised to buy
10 any stock in National Bankers Life Insurance
11 Company, Olympic Life Insurance Company,
12 Sharpstown State Bank, City Bank and Trust Company,
13 or Dallas Bank and Trust Company;

14 (2) secured a loan with, through or placed by
15 Frank Sharp, John Osorio, National Bankers Life
16 Insurance Company, Olympic Life Insurance Company,
17 Sharpstown State Bank, City Bank and Trust Company,
18 Dallas Bank and Trust Company, or any person or
19 company associated with any of them;

20 (3) received any fee, reimbursement for expenses,
21 gift, or campaign contribution from John Osorio,
22 Frank Sharp, National Bankers Life Insurance
23 Company, Olympic Life Insurance Company, Sharps-
24 town State Bank, City Bank and Trust Company, Dallas
25 Bank and Trust Company, or any person or company

1 associated with any of them, except that I was
2 reimbursed by Waggoner Carr for part of the
3 actual expenses incurred in connection with his
4 1966 U. S. Senate Campaign.

5 QUESTION: Do you know of any official or employee
6 of the State of Texas who was offered or received
7 an inducement of any type, form or character to
8 advocate, support or vote for House Bills 72 and
9 73?

10 ANSWER: No.

11 QUESTION: Why did you agree to sponsor House
12 Bills 72 and 73?

13 ANSWER: The reasons for the legislation given by
14 John Osorio were valid in my opinion. In addition
15 the bill would be good for individual depositors.
16 They would be charged nothing for this additional
17 deposit protection. The depositor had to benefit
18 from this legislation. I fully believed, as did
19 every other member of the Senate, that the
20 authority created by these bills extended only
21 to insured deposits in excess of those insured
22 by the F.D.I.C. In fact it is inconceivable to
23 me that the Banking Department would permit a
24 company which it regulated to issue \$100,000.00
25 in deposit insurance to a bank which the F.D.I.C.

1 refused to insure up to \$15,000.00, the F.D.I.C.
2 limit at that time. I still believe the basic
3 concept of the bill as it was represented to us
4 is good and I would support such legislation if
5 I were still in the Senate.

6 QUESTION: Did you understand that the corporations
7 created by this bill would have been supported
8 by the full faith and credit of the State of
9 Texas?

10 ANSWER: No. It was my understanding that the
11 State of Texas would not be involved except as a
12 regulatory agency through the Department of
13 Banking. I felt and I assumed that the other
14 members of the Senate felt that the Department of
15 Banking would require adequate capital structures
16 to accomplish the purpose for which the corporations
17 were created.

18 FURTHER AFFIANT SAITH NOT.

19 /s/ JACK B. STRONG

20 Sworn to and subscribed before me by the
21 said Jack B. Strong, the said affiant, on this
22 16th day of August, 1971.

23 /s/ Patricia L. Riley
24 Notary Public in and for
25 Gregg County, Texas."

CHAIRMAN MURRAY: Would you say that Mr. Nugent

1 was well read?

2 MR. SLIDER: Yes, but he wasn't under oath.

3 MR. NUGENT: I'll offer this document into the
4 record of the Committee and I'll ask the Court Reporter
5 to identify it.

6 CHAIRMAN MURRAY: Before you identify it, I
7 wonder if you shouldn't identify this previous one that
8 we just read.

9 (The letter referred to was
10 marked "Exhibit 13," for
identification.)

11 (The affidavit referred to
12 was marked "Exhibit 14"
for identification.)

13 CHAIRMAN MURRAY: This brings our testimony for
14 this particular meeting to a close. We had hoped to
15 possibly have Mr. Osorio here this afternoon, but the last
16 information we had was he hadn't been served yet with a
17 subpoena. If he has been served, it's my understanding
18 that he is appearing before the SEC or the Grand Jury in
19 Houston. So the chances are he couldn't be here this
20 afternoon.

21 So that will bring our session today to a
22 close.

23 I might say for the benefit of any of you who
24 may be interested, we have--within the last few days, a
25 number of depositions have come in our hands which we haven't

1 had previously. This Committee feels that we need to
2 take some time to thoroughly study all the depositions that
3 have been given, together with this testimony here for the
4 last two days. So for that reason, we don't anticipate
5 that we will have another meeting for another, possibly
6 two weeks. But at that time we will either call back some-
7 body that we feel we need to call back after reading these
8 depositions, or if there is additional testimony from
9 other people that we need, we'll call them.

10 Is there anything else that the members of the
11 Committee might want to say, or any other action we should
12 take at this time?

13 If not, the Committee will simply stand in
14 recess.

15 MR. GREEN: Mr. Chairman, I want to thank you
16 for the courtesy of the House Committee for permitting me,
17 as a representative of the Senate, to be present at these
18 hearings. Thank you for your courtesies.

19 CHAIRMAN MURRAY: We're glad to have you, Mr.
20 Green. We want you to feel free to sit in on any committee
21 hearings that we have.

22 The Committee then will stand recessed, subject
23 to the call of the Chair.

24 (Whereupon, the hearing was recessed.)
25

CERTIFICATE

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Walter H. Hickman, a Notary Public in and for Travis County, Texas, do certify that on the 18th and 19th days of August, 1971, the foregoing proceedings before the House General Investigating Committee were reported by me and that the foregoing 317 pages constitute a full, true and correct transcription of my Stenograph notes.

GIVEN under my hand and seal of office this 30th day of August, 1971.



Walter H. Hickman, Notary Public
in and for Travis County, Texas.